PROBLEMS RELATING TO THE INSOLVENCY OF THE BLACK LUNG DISABILITY TRUST FUND

HEARINGS

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

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CONTENTS

WITNESSES

Page
U.S. General Accounting Office: Morton E. Henig, Senior Associate Director, Human Resources Division; Donald O'Bryan, Project Director, Black Lung Program Review; Edward Tasca, Area Manager, Workman's Compensation Programs; and Murray Grant, M.D., Senior Medical Consultant 2
U.S. Department of Energy: J. Erich Evered, Administrator, Energy Information Administration; Mary Hutzler, Chief, Coal Data Analysis and Forecasting Branch 38
"Action on Smoking and Health," Athena Mueller on behalf of John F. Banzhaf 257
American Insurance Association, Charles Coakley and Andrew Kalmykow 159
American Iron and Steel Institute, John Stenmark 240
American Mining Congress, John A. Conlon and W. K. C. Morgan, M.D 229
Anderson, Willie, Logan County Black Lung Association 216
Bagge, Carl E., National Coal Association 139
Bailey, Bill, West Virginia Black Lung Association 214
Banzhaf, John F. (*See*, Action on Smoking and Health.)
Bethlehem Steel Corp., Russell Guy 222
Bowers, Laura, National Black Lung Association 207
Bowman, Bill, Virginia Black Lung Association 217
Briscoe, Robert K., J. Huell Briscoe & Associates, Chicago 61
Buckner, Michael, United Mine Workers of America 80
Chicago Area Black Lung Association, Paul Siegel 210
Church, Sam, Jr., United Mine Workers of America 80
Clover, Fork Clinic, Harlan County, Ky., J. D. Miller, M.D 254
Coakley, Charles, American Insurance Association 159
Conlon, John A., American Mining Congress 229
Edison Electric Institute, John Kearney 190
Frasure, Nick, Kentucky Miners Health Care 255
Grafton Coal Company, Dwight Keating 248
Guy, Russell, National Association of Manufacturers and Bethlehem Steel Corp 222
Harlan County, Ky., Black Lung Association, Andy Vandergaw 253
J. Huell Briscoe & Associates, Robert K. Briscoe 61
Kalmykow, Andrew, American Insurance Association 159
Kearney, John, Edison Electric Institute 190
Keating, Dwight, Mining and Reclamation Council of America and Grafton Coal Company 248
Kentucky Miners Health Care, Nick Frasure 255
Kerr, Lorin, United Mine Workers of America 80
Logan County Black Lung Association, Willie Anderson 216
Merchant, James A., M.D., National Institute for Occupational Safety and Health 27
Millar, Donald J., M.D., National Institute for Occupational Safety and Health 27
Miller, J. D., M.D., Clover Fork Clinic, Harlan County, Ky 254
Mining and Reclamation Council of America, Dwight Keating 248
Morgan, W. K. C., M.D., American Mining Congress 229
Mueller, Athena, Action on Smoking and Health 257
National Association of Manufacturers, Russell Guy 222
National Black Lung Association, Laura Bowers on behalf of William Worthington 207

Page

National Coal Association, Carl E. Bagge, Bruce Watzman and Mark Solomons 139
National Institute for Occupational Safety and Health, J. Donald Millar, M.D., and James A. Merchant, M.D 27
Siegel, Paul, Chicago Area Black Lung Association 210
Solomons, Mark, National Coal Association 139
Stenmark, John, American Iron and Steel Institute 240
United Mine Workers of America, Sam Church, Jr., Lorin Kerr, and Michael Buckner 80
Vandergaw, Andy, Harlan County, Ky., Black Lung Association 253
Virginia Black Lung Association, Bill Bowman 217
Watzman, Bruce, National Coal Association 139
West Virginia Black Lung Association, Bill Bailey 214
Worthington, William (*See*, National Black Lung Association.)

MATERIAL SUBMITTED FOR THE RECORD

Applegate, Hon. Douglas, a Representative in Congress from the State of Ohio, statement 260
American Bankers Association, statement 262
Cherkauskas, W. B., Waterbury, Conn., letter 268
Brook Contracting Corp., Hazleton, Pa., Lawrence Keba, statement 262
Hanshaw, Ruth, Belva, W. Va., letter 268

APPENDIX

Press release of October 15, 1981, announcing receipt of administration's black lung proposal 271
U.S. Department of Labor, Hon. Raymond J. Donovan, letter, statement, and draft bill 271
Letters and comments on administration's proposal from:
  National Coal Association, Carl E. Bagge 279
  Edison Electric Institute, John J. Kearney 282
  National Association of Manufacturers, Russell Guy and Daniel W. Vannoy 284
  America Iron and Steel Institute, John H. Stenmark 297
  Mining and Reclamation Council of America, Tom Altmeyer 297
  American Insurance Association:
    William W. Suttle 300
    Charles Coakley 302
  American Mining Congress, J. Allen Overton, Jr 305

PROBLEMS RELATING TO THE INSOLVENCY OF THE BLACK LUNG DISABILITY TRUST FUND

MONDAY, JULY 27, 1981

House of Representatives,
Committee on Ways and Means,
Subcommittee on Oversight,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Charles B. Rangel (chairman of the subcommittee) presiding.

Chairman Rangel. The subcommittee will open hearings on the insolvency problems of the Black Lung Disability Trust Fund. The black lung benefits program and the financial condition of its trust fund have been the subject of considerable attention during the past few months. The administration, in its program for economic recovery last February, announced its intent to place the trust fund on a self-sustaining basis.

Moreover, various recommendations for dealing with the insolvency problems of the trust fund, such as placing a "temporary user fee" on coal, have been suggested and debated during the budget reconciliation process. Clearly, there is widespread concern about the grave financial condition of the trust fund, as well as the general operation and effectiveness of the program. And it would appear that this concern is justified.

The trust fund has a current deficit of approximately $1 billion which is projected to reach $2 billion by the end of fiscal year 1982. Since the congressional intent in creating this program was to provide sufficient revenues to match benefit obligations on an ongoing basis, it is imperative to reassess the basis on which the program is financed and managed.

Today, the subcommittee will hear testimony on various aspects of the black lung program in order to receive data which can be used to evaluate alternative proposals for trust fund solvency. The subcommittee expects to conduct additional hearings in the fall to receive testimony from the administration and other interested parties on specific proposals for remedial legislation, and we intend to take this testimony as the basis of our recommendations to be made to the full committee.

Mr. Gibbons.

Mr. Gibbons. No, thank you, Mr. Chairman.

Chairman Rangel. Mr. Duncan.

Mr. Duncan. No, thank you, Mr. Chairman.

Chairman **Rangel**. Mr. Henig, Senior Associate Director of the Human Resources Division of the U.S. General Accounting Office. You may identify those people that will be testifying with you.

STATEMENT OF MORTON E. HENIG, SENIOR ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, U.S. GENERAL ACCOUNTING OFFICE (GAO), ACCOMPANIED BY DONALD O'BRYAN, PROJECT DIRECTOR, BLACK LUNG PROGRAM REVIEW, PHILADELPHIA REGIONAL OFFICE, GAO; EDWARD TASCA, AREA MANAGER, WORKER'S COMPENSATION PROGRAMS, HUMAN RESOURCES DIVISION, GAO, AND DR. MURRAY GRANT, SENIOR MEDICAL CONSULTANT, HUMAN RESOURCES DIVISION, GAO

Mr. **Henig**. Thank you, Mr. Chairman.

On my right, I have Mr. Edward Tasca, who is the area manager of our work on workers compensation programs, Department of Labor, which includes black lung, Federal Employees Compensation Act, and Longshoreman and Harbor Workers' Compensation Act.

Next to him is Don O'Bryan from our Philadelphia office, who was Director of the work we did on the black lung program. He has worked in that area for several years.

On my left is Dr. Murray Grant, who is our Senior Medical Consultant, Human Resources Division, General Accounting Office.

Mr. Chairman and members of the subcommittee, we are pleased to be here today to discuss the results of ongoing work related to the Department of Labor's approval of black lung benefit claims and the computer model used by Labor to predict the financial condition of the Black Lung Disability Trust Fund. We have previously issued a report entitled "Legislation Allows Black Lung Benefits to be Awarded Without Adequate Evidence of Disability," that discusses the Social Security Administration's approval of black lung benefits claims.

We conducted these assignments at the request of Congressman Erlenborn.

A little background on the program now. The Federal Coal Mine Health and Safety Act of 1969 established the first program at any governmental level to provide benefits to victims of a single occupational disease. This act, which the Congress amended in 1972 and 1977, provides for monthly payments to eligible miners totally disabled due to pneumoconiosis—commonly called black lung—and to their survivors.

Under the 1969 act, the Secretary of the Department of Health and Human Services had responsibility for prescribing standards to determine whether a miner's total disability or death was due to black lung.

This act also contained dates, which the 1972 amendments changed, that shifted responsibility for processing claims and administering the program from the Social Security Administration to the Department of Labor. Labor became responsible for processing living miner claims filed after June 30, 1973, and most survivor claims filed after December 31, 1973.

Amendments to the act in 1972 were implemented with the clear congressional intention of making more individuals eligible for program benefits. These amendments extended black lung benefits to surface coal miners and eased the requirements for medical evidence to establish total disability. For the most part, the 1972 provisions were made retroactive to December 1969.

The 1977 amendments—the Black Lung Benefits Reform Act of 1977—made a number of changes to remove restrictive provisions in the old law which prevented a large number of claimants from receiving benefits. These amendments broadened the definition of pneumoconiosis to include respiratory and pulmonary impairments arising out of coal mine employment.

They also required a re-review of all previously denied or pending black lung claims using: (1) the new requirements contained in the amendments, and (2) standards promulgated by Labor that would not be more restrictive then the criteria applicable to a claim filed with SSA on June 30, 1973.

The 1977 amendments also required Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests that accurately reflect total disability in coal miners.

Since the enactment of the black lung benefit program in 1969 to December 1980, SSA has paid over $9 billion in benefits from appropriated funds to almost 370,000 claimants, out of the 537,000 miners and survivors who filed claims with SSA.

From July 1973 through April 1981, Labor has approved over 94,700 claims out of the more than 282,500 claims it reviewed—includes SSA claims re-reviewed under the 1977 amendments. During this period Labor has paid benefits of over $1.75 billion from the Black Lung Disability Trust Fund for about: (1) 90,000 of the 94,700 claims approved by Labor, and (2) 24,500 claims approved by SSA. Responsible coal mine operators have paid the rest of these claims.

A little bit about the trust fund. The Black Lung Benefits Revenue Act of 1977—companion legislation to the Black Lung Benefits Reform Act of 1977—established the Black Lung Disability Trust Fund and shifted fiscal responsibility for black lung benefit payments from the Federal Government to the trust fund. This fund pays all administrative expenses related to the black lung benefits program and all black lung benefits when no responsible mine operator can be assigned liability for such benefits or when coal mine employment ceased prior to January 1, 1970.

The trust fund is partially financed by a tax on coal sold by producers. Because black lung benefit payments currently exceed revenues generated by the tax on coal, the trust fund also receives advances from the Treasury that are repayable with interest.

From April 1, 1978, when the fund was established to March 31, 1981, the fund has paid approximately $1.9 billion for administrative expenses and for benefits to eligible claimants and their survivors. During this period, the trust fund received coal tax revenues of over $0.7 billion and advances of about $1.2 billion from the Treasury.

For this review, we analyzed 450 randomly selected claims of which 205 represented approvals, to determine: (1) Labor's basis for approval, and (2) the adequacy of the medical evidence used to establish disability or death due to black lung. These 205 approved claims consisted of 153 claims re-reviewed under the 1977 amendments and 52 new claims. We also determined the effect that Labor's March 1980 standards for determining total disability—developed in consultation with NIOSH—would have had on the approved claims.

Our medical adviser discussed the diagnosis of pneumoconiosis and the adequacy and reliability of tests used to determine disability from black lung with a number of respiratory and pulmonary specialists. He also established the criteria that we used to determine whether the claims approved by Labor had adequate medical evidence to establish disability or death from black lung.

Moreover, he reviewed, in detail, those cases in which there were questions related to the adequacy of the medical evidence to establish disability.

Our review of the 205 black lung claims approved by Labor indicated that in 172 cases—roughly 80 percent—the medical evidence was not adequate to establish disability or death from black lung. The approval of these claims was not contrary to the law, however, the approval was based either on provisions in the amended black lung legislation or on interim standards contained in regulations promulgated by Labor in August 1978.

Information in the case files indicated that many of these claimants had medical disorders, which included respiratory and pulmonary impairments. However, this information also indicated that Labor approved most of these claims based on provisions in the law or in regulations which we believe do not adequately insure that benefits are provided only to miners totally disabled from black lung or to their survivors.

For 33 of the 205 approved claims, we agreed that the medical evidence adequately established disability or death from black lung. For these claims, X-rays or biopsies showed the presence of black lung, most test results established disability, or the death certificate or autopsy confirmed that death was due to black lung.

The amended black lung legislation contains the following provisions that Labor used as a basis for approving claims: (1) presumptions of black lung, disability or death due to black lung based on years of coal mine employment or disability based on medical evidence of complicated pneumoconiosis; (2) medical evidence such as X-rays, pulmonary function studies, or blood gas studies; (3) affidavits from spouses or others; and (4) medical opinions based on the results of a physical examination.

My prepared testimony, which is in the record, contains more specific data on the basis used by Labor to approve claims. I would like to bypass that in the interest of brevity, and get to a discussion of the trust fund model. Before I do, I would like to briefly mention new standards developed by Labor and how they would affect the approval of claims we reviewed. These are the 1980 standards.

The criteria contained in regulations which became effective on March 31, 1980, will result in fewer approved claims because it provides more stringent test values for determining disability.

In addition, these new regulations automatically revoked Labor's 1978 regulations that contained more liberal presumptions for determining disability from disease than those contained in black lung legislation.

We applied these new standards to the claims in our sample and found that the claims approval rate would have decreased by almost 50 percent—from 205 to 111 approvals. While these new regulations establish more stringent standards to be applied in determining whether a miner is totally disabled and specify the procedures and requirements to be followed in conducting medical examinations and in administering medical tests, the provisions in the law which permit the use of presumptions, affidavits, and inconclusive or conflicting medical evidence still exist. In our opinion, Labor would still have approved 88 of the 111 claims using these provisions. The remaining 23 claims, in our opinion, had adequate medical evidence of disability or death due to black lung.

I would like to briefly discuss the trust fund financial condition. Our review of the computer based model that Labor is currently using to predict the financial condition of the Black Lung Disability Trust Fund indicates that the model contains a reasonably good set of procedures for estimating the trust fund's financial condition. However, without casting any aspersions on the reasonableness of Labor's model, we should point out that good estimating procedures will not necessarily result in an accurate forecast of what will happen in the future.

Labor's model contains a large number of variables—that is, estimates of different conditions that will affect the financial condition of the fund. In our opinion, several of these variables would seem to have a fairly significant impact on the forecast of future financial condition. These would be variables such as the number of miners who will file claims in future years, anticipated coal production, tax rates on coal produced, interest rates on the amounts the fund owes the Treasury.

For each variable, Labor assigns a future value based in essence on its judgment of what they think will take place in the future. In addition, over time, Labor has found that additional variables—that is, conditions not earlier considered—should also be factored into their projections.

Adding these new variables results in a revision of the model. Thus, the model is dynamic—over time, different values are given to the variables in the model, and new variables may be added as experience demonstrates the need. Labor's latest trust fund model contains estimated values for over 80 different vairables.

By assigning different values for only a few of the variables used to project the fund's financial conditions in future years, our analysis indicated that the financial condition could be significantly different than that predicted by Labor. Labor projected in early 1981, for the new administration's budget proposals, that the trust fund would have a deficit of about $2.2 billion in 1983, a deficit of $4.7 billion in 1995 and a deficit over $1.7 billion in 2010. As of March 1981, the fund owed the Treasury about $1.2 billion.

The following example demonstrates how estimates of the fund's future financial condition can vary depending on the values assigned to the variables:

Labor estimated that interest rates on funds borrowed from the Treasury—the trust fund owes the Treasury the amount borrowed, plus interest—would fluctuate between 9.75 percent in 1981 to 6.8 percent in 1987 and then level off to 7.6 percent from 1988 to the year 2010. Although Labor's estimates appear reasonable, we reestimated the fund's condition using higher and lower interest rate assumptions.

By assuming future interest rates of 9 percent for the entire period through the year 2010, which would assume an error of roughly 20-percent in Labor's estimates, the fund would have a deficit of $5.02 billion in 1996 and $2.46 billion in 2010.

Conversely, if interest rates are 20 percent lower than the 7.6 percent used by Labor—say roughly 6 percent—the fund would have an estimated deficit of $4.16 billion in 1995 and a surplus of $0.13 billion in 2010.

Let me conclude now. The Federal Coal Mine Health and Safety Act as amended and regulations promulgated by Labor, permitted Labor to: (1) use presumptions based on years of coal mine employment to establish disability or death from black lung; (2) approve claims when there was contradictory or inconclusive medical evidence; and (3) accept affidavits to establish disability or death from black lung.

However, in a significant number of these cases, we believe there was inadequate medical evidence of disability or death from black lung in the claimant's file. Although these files contained evidence that many claimants had medical disorders, including pulmonary and respiratory impairments, the medical evidence to establish disability or death from black lung frequently conflicted with other evidence in the files, or in some cases, was nonexistent. Therefore, we believe there is not enough assurance that black lung benefits are going to miners who are totally disabled from black lung or to their survivors.

In addition, we believe that some claimants are receiving benefits for respiratory and pulmonary impairments that may be aggravated by, but are not usually caused by, coal mine employment. In fact, some of these impairments may clear up once the miner is removed from the mine environment.

In our opinion, Labor's new standards that apply to claims filed after March 1980 will result in fewer approved claims. However, because these new standards do not address the provisions in the amended legislation for approving benefits the problems that relate to inadequate medical evidence will continue.

With respect to the trust fund, no one knows when the Black Lung Disability Trust Fund will have a surplus or when the fund will start receiving sufficient revenues to begin paying back the funds it borrowed from the Treasury. While the trust fund model can predict when these events will occur—and I use the word "predict"—these predictions are based on judgments as to what will likely happen in the future. Thus, it is important for the Congress, particularly the Ways and Means Committee of the House, and the Senate Finance Committee, to periodically assess the judgments that are used by Labor in making its projections. We expect to issue our reports on the matters we have discussed today this fall.

This concludes my prepared statement. We will be happy to answer any questions that the subcommittee has relating to our review.

[The prepared statement follows:]

STATEMENT OF MORTON E. HENIG, SENIOR ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee, we are pleased to be here today to discuss the results of ongoing work related to the Department of Labor's approval of black lung benefit claims and the computer model used by Labor to predict the financial condition of the Black Lung Disability Trust Fund. We have previously issued a report entitled "Legislation Allows Black Lung Benefits To Be Awarded Without Adequate Evidence of Disability" (HRD-80-81, July 28, 1980) that discusses the Social Security Administration's approval of black lung benefit claims.

We conducted these assignments at the request of Congressman John Erlenborn.

BACKGROUND

Black Lung Benefits Program.—The Federal Coal Mine Health and Safety Act of 1969 established the first program at any governmental level to provide benefits to victims of a single occupational disease. This act, which the Congress amended in 1972 and 1977, provides for monthly payments to eligible miners totally disabled due to pneumoconiosis--commonly called "black lung"—and to their suvivors.

Under the 1969 act, the Secretary of the Department of Health and Human Services[1] had responsibility for prescribing standards to determine whether a miner's total disability or death was due to black lung.

This act also contained dates, which the 1972 amendments changed, that shifted responsibility for processing claims and administering the program from the Social Security Administration (SSA) to the Department of Labor. Labor became responsible for processing living miner claims filed after June 30, 1973, and most survivor claims filed after December 31, 1973.

Amendments to the act in 1972 were implemented with the clear congressional intention of making more individuals eligible for program benefits. These amendments extended black lung benefits to surface coal miners and eased the requirements for medical evidence to establish total disability. For the most part, the 1972 provisions were made retroactive to December 1969.

The 1977 amendments[2]—the Black Lung Benefits Reform Act of 1977—made a number of changes to remove restrictive provisions in the old law which prevented a large number of claimants from receiving benefits. These amendments broadened the definition of pneumoconiosis to include respiratory and pulmonary impairments arising out of coal mine employment. They also required a re-review of all previously denied or pending black lung claims using (1) the new requirements contained in the amendments and (2) standards promulgated by Labor that would not be more restrictive than the criteria applicable to a claim filed with SSA on June 30, 1973. The 1977 amendments also required Labor in consulation with the National Institute for Occupational Safety and Health (NIOSH) to establish criteria for all appropriate medical tests that accurately reflect total disability in coal miners.

Since the enactment of the black lung benefit program in 1969 to December 1980 SSA has paid over $9 billion in benefits from appropriated funds to almost 400,000 claimants, out of the 537,000 miners and survivors who filed claims with SSA.

From July 1973 through April 1981, Labor has approved over 94,700 claims out of the more than 282,500 claims it reviewed (includes SSA claims rereviewed under the 1977 amendments). During this period Labor has paid benefits of over $1.75 billion from the Black Lung Disability Trust Fund for about (1) 90,000 of the 94,700 claims approved by Labor and (2) 24,500 claims approved by SSA.[3] Responsible coal mine operators have paid the rest of these claims.

Black Lung Disability Trust Fund.—The Black Lung Benefits Revenue Act of 1977—companion legislation to the Black Lung Benefits Reform Act of 1977—established the Black Lung Disability Trust Fund and shifted fiscal responsibility for black lung benefit payments from the Federal Government to the Trust Fund. This Fund pays all administrative expenses related to the black lung benefits program and all black lung benefits when no responsible mine operator can be assigned liability for such benefits or when coal mine employment ceased prior to January 1, 1970. The Trust Fund is partially financed by a tax on coal sold by producers. Because black lung benefit payments currently exceed revenues generated by the tax on coal, the Trust Fund also receives advances from the Treasury that are repayable with interest.

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[1] Before May 4, 1980, the Department of Health, Education, and Welfare.

[2] Actually enacted on March 1, 1978.

[3] Under the 1977 amendments, claims reviewed and approved by SSA are paid from the Trust Fund.

From April 1, 1978, when the fund was established to March 31, 1981, the fund has paid approximately $1.9 billion for administrative expense and for benefits to eligible claimants and their survivors. During this period, the Trust Fund received coal tax revenues of over $.7 billion and advances of about $1.2 billion from the Treasury.

SCOPE AND METHODOLOGY

For this review, we analyzed 450 randomly selected claims of which 205 represented approvals, to determine (1) Labor's basis for approval and (2) the adequacy of the medical evidence used to establish disability or death due to black lung. These 205 approved claims consisted of 153 claims re-reviewed under the 1977 amendments and 52 new claims. We also determined the effect that Labor's March 1980 standards for determining total disability—developed in consultation with NIOSH—would have had on the approved claims.

Our medical advisor discussed the diagnosis of pneumoconiosis and the adequacy and reliability of tests used to determine disability from black lung with a number of respiratory and pulmonary specialists. He also established the criteria that we used to determine whether the claims approved by Labor had adequate medical evidence to establish disability or death from black lung. (See appendix I.) Moreover, he reviewed, in detail, those cases in which there were questions related to the adequacy of the medical evidence to establish disability.

MEDICAL EVIDENCE GENERALLY INADEQUATE TO ESTABLISH DISABILITY OR DEATH DUE TO BLACK LUNG

Our review of the 205 black lung claims approved by Labor indicated that in 172 cases (84 percent), the medical evidence was not adequate to establish disability or death from black lung. The approval of these claims was not contrary to the law, however, the approval was based either on provisions in the amended black lung legislation or on interim standards contained in regulations promulgated by Labor in August 1978.

Information in the case files indicated that many of these claimants had medical disorders, which included respiratory and pulmonary impairments. However, this information also indicated that Labor approved most of these claims based on provisions in the law or in regulations which we believe do not adequately ensure that benefits are provided only to miners totally disabled from black lung or to their survivors.

For 33 of the 205 approved claims, we agreed that the medical evidence adequately established disability or death from black lung. For these claims, X-rays or biopsies showed the presence of black lung, most test results established disability, or the death certificate or autopsy confirmed that death was due to black lung.

The amended black lung legislation contains the following provisions that Labor used as a basis for approving claims:

Presumptions of (1) black lung, disability or death due to black lung based on years of coal mine employment or (2) disability based on medical evidence of complicated pneumoconiosis;

Medical evidence such as X-rays, pulmonary function studies, or blood gas studies;

Affidavits from spouses or others, and

Medical opinions based on the results of a physical examination.

Examples of claims approved by Labor are contained in appendix II.

Benefits awarded based on presumptions

Labor used presumptions to approve 104 (51 percent) of the 205 claims even though the case files contained inadequate medical evidence to support determinations of disability or death from black lung. Labor approved 16 of the 104 claims based on provisions of the law which allow presumptions of (1) black lung, disability, or death due to black lung based on years of coal mine employment and (2) total disability based on medical evidence of complicated pneumoconiosis.

In addition to the presumptions specifically mentioned in the black lung legislation, the 1977 amendments required Labor to promulgate interim regulations for reviewing claims which "shall not be more restrictive than the criteria" used by SSA before July 1, 1973. These regulations contained "interim presumptions" that were even more liberal than those contained in the black lung legislation. In commenting on these regulations in the Federal Register, Labor stated, "The Department does not agree with the view that the interim standards" (containing the interim presumptions) "cannot as a matter of law be more favorable to claimants than SSA's standards. The Act requires only that the Department's standards be no more restrictive than those applied by SSA." Of the 205 claims approved by Labor, we found that Labor approved 88 of them on the basis of the interim presumptions contained in these regulations.

Our review also showed that the 104 claims approved using presumptions contained either no medical evidence or medical evidence which conflicted with the presumption of black lung or disability or death due to black lung. Although four of the five legislative presumptions and Labor's interim presumptions can be rebutted, we found this rarely occurred. According to Labor officials, the congressional intent of the 1977 amendments was to make more individuals eligible for program benefits and to resolve doubt in favor of the claimants.

Benefits awarded based on inadequate medical evidence

Labor approved 55 (27 percent) of the 205 claims on the basis of medical evidence that was inconclusive for establishing disability or death due to black lung. We found these claims contained medical evidence in the files that conflicted with the evidence that was used to determine total disability or death from black lung. According to Labor officials, these claims were approved without trying to resolve this conflicting medical evidence because the intent of the black lung legislation is to give the benefit of any doubt to the claimant. Based on our discussions with pulmonary and respiratory specialists, black lung can be diagnosed and disability determined with a high degree of accuracy and reliability. In our opinion, conflicting medical evidence can be resolved by the parties who disagree or by third party arbitrators.

Examples of conflicting medical evidence that we found in the files showed that:

Chest X-ray results differed, that is, one X-ray was interpreted as positive for black lung while another was not.

The same X-ray was interpreted both positively and negatively for black lung.

X-rays indicated black lung was present and the file contained some medical evidence that supported a disability determination as well as other medical evidence that did not support such a determination.

With regard to X-ray evidence of pneumoconiosis, the 1977 amendments provide that, where other evidence of pulmonary or respiratory impairments exist, Labor is required—if various conditions are met—to accept the positive reading of the X-ray by the claimant's physician. Labor cannot have other experts re-read these X-rays if the X-rays (1) are of acceptable quality, (2) were taken by a qualified technician, (3) were initially interpreted by a board certified or board eligible radiologist, and (4) were not fraudulently misrepresented.

Benefits awarded based on affidavits

Seven of the 205 claims approved by Labor, were based on affidavits describing the deceased miner's physical condition. We found that the case files for these claims contained either no other medical evidence of disability or death from black lung or medical evidence that indicated the miner had not been disabled or had not died from black lung. The act requires Labor to consider affidavits as revelant medical evidence in determining the validity of claims. The act also states that where there is no medical or other relevant evidence in the case of a deceased miner, affidavits shall be considered sufficient to establish that the miner was totally disabled from black lung.

Benefits awarded based on medical opinions without adequate collaborating medical evidence

Labor approved 6 of the 205 claims (3 percent) on the basis of a physician's medical opinion. However, we found that the case files contained either (1) no medical evidence of black lung or disability from black lung other than the physician's statement, or (2) medical evidence that conflicted with the medical opinion used to approve the claim.

The law requires Labor to consider all relevant evidence, including evidence submitted by a claimant's physician, in determining the validity of claims. In our opinion, physicians' statements, in the absence of supporting data, are not adequate medical evidence to establish disability or death due to black lung.

BROADENED DEFINITION OF PNEUMOCONIOSIS

The 1977 amendments also expanded the definition of pneumoconiosis to include its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. Labor's regulations state that for purposes of this definition a disease arising out of coal mine employment includes any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to, or aggravated by, dust exposure in coal mine employment. We found claimants were awarded benefits for asthma or other respiratory conditions which, according to our medical advisor, may be aggravated but are not usually caused by coal mine employment.

In addition, Labor awarded benefits to miners for respiratory conditions such as asthma and bronchitis which do not usually permanently damage the lungs. Once the miner is removed from the coal mine, the condition could improve or be eliminated.

LABOR'S NEW "718" STANDARDS WILL NOT RESOLVE PROBLEMS RELATED TO INADEQUATE MEDICAL EVIDENCE

For claims filed after March 30, 1980, Labor applied new standards for determining total disability from black lung. While these new standards will reduce the claims approval rate, we believe that the previously discussed problems of inadequate medical evidence to establish disability or death from black lung will continue.

The 1977 amendments to the black lung legislation required Labor, in consultation with the National Institute of Occupational Safety and Health, to establish criteria for all appropriate medical tests which accurately reflect total disability in living coal miners. This criteria—contained in regulations (20 CFR 718) which became effective on March 31, 1980—will result in fewer approved claims because it provides more stringent test values for determining disability. In addition, these new regulations automatically revoked Labor's August 1978 regulations that contained more liberal presumptions for determining disability or disease than those contained in the black lung legislation.

We applied these new standards to the claims in our sample and found that the claims approval rate would have decreased by almost 50 percent—from 205 to 111 approvals. While these new regulations (1) establish more stringent standards to be applied in determining whether a miner is totally disabled and (2) specify the procedures and requirements to be followed in conducting medical examinations and in administering medical tests, the provisions in the law which permit the use of presumptions, affidavits, and inconclusive or conflicting medical evidence still exist. In our opinion, Labor would still have approved 88 of the 111 claims using these provisions. The remaining 23 claims in our opinion had adequate medical evidence of disability or death due to black lung.

ASSUMPTIONS AFFECT PROJECTIONS OF TRUST FUND FINANCIAL CONDITION

Our review of the computer-based model that Labor is currently using to predict the financial condition of the Black Lung Disability Trust Fund indicates that the model contains a reasonably good set of procedures for estimating the Trust Fund's financial condition. However, without casting any aspersions on the reasonableness of Labor's model, we should point out that good estimating procedures will not necessarily result in an accurate forecast of what will happen in the future.

Labor's model contains a large number of variables—that is, estimates of different conditions that will affect the financial condition of the fund. In our opinion several of these variables would seem to have a fairly significant impact on the forecast of future financial condition. These would be variables such as the number of miners who will file claims in future years, anticipated coal production, tax rates on coal produced, interest rates on the amounts the fund owes the treasury, and interest rates assessed responsible mine operators, which by the way is only 6 percent. For each variable, Labor assigns a future value based in essence on its judgment of what they think will take place in the future. In addition, over time, Labor has found that additional variables—conditions not earlier considered—should also be factored into their projections. Adding these new variables results in a revision of the model. Thus, the model is dynamic—over time, different values are given to the variables in the model, and new variables may be added as experience demonstrates the need. Labor's latest Trust Fund model contains estimated values for over 80 different variables.

By assigning different values for only a few of the variables used to project the Fund's financial condition in future years, our analysis indicated that the financial condition could be significantly different than that predicted by Labor. Labor projected in early 1981, for the new Administration's budget proposals, that the Trust Fund would have a deficit of $2.22 billion in 1983, a deficit of $4.77 billion in 1995 and a deficit over $1.71 billion in 2010. As of March 1981, the Fund owed the Treasury about $1.2 billion.

The following example demonstrates how estimates of the Fund's future financial condition can vary depending on the values assigned to the variables.

Labor estimated that interest rates on funds borrowed from the Treasury—the Trust Fund owes Treasury the amount borrowed plus interest—would fluctuate between 9.75 percent in 1981 to 6.8 percent in 1987 and then level off to 7.6 percent from 1988 until 2010. Although Labor's estimates appear reasonable, we reestimated the Fund's condition using higher and lower interest rate assumptions.

By assuming future interest rates of 9 percent for the entire period through 2010, which would assume an error of roughly 20 percent in Labor's estimate, the Fund would have a deficit of $5.02 billion in 1995 and $2.46 billion in 2010.

Conversely, if future interest rates are 20 percent lower than the 7.6 percent used by Labor—say roughly 6 percent—the Fund would have an estimated deficit of $4.16 billion in 1995 and a surplus of $.13 billion in 2010.

CONCLUSIONS

The Federal Coal Mine Health and Safety Act as amended and regulations promulgated by Labor, permitted Labor to (1) use presumptions based on years of coal mine employment to establish disability or death from black lung, (2) approve claims when there was contradictory or inconclusive medical evidence, and (3) accept affidavits to establish disability or death from black lung. However, in a significant number of these cases we believe there was inadequate medical evidence of disability or death from black lung in the claimant's file. Athough these files contained evidence that many claimants had medical disorders, including pulmonary and respiratory impairments; the medical evidence to establish disability or death from black lung frequently conflicted with other evidence in the files, or in some cases, was nonexistent. Therefore, we believe there is not enough assurance that black lung benefits are going to miners who are totally disabled from black lung or to their survivors.

In addition, we believe that some claimants are receiving benefits for respiratory and pulmonary impairments that may be aggravated by, but are not usually caused by, coal mine employment. In fact, some of these impairments may clear up once the miner is removed from the mine environment.

In our opinion, Labor's new standards that apply to claims filed after March 1980 will result in fewer approved claims. However, because these new standards do not address the provisions in the amended legislation for approving benefits the problems that relate to inadequate medical evidence will continue.

No one knows when the Black Lung Disability Trust Fund will have a surplus or when the Fund will start receiving sufficient revenues to begin paying back the funds it borrowed from the Treasury. while the Trust Fund model can predict when these events will occur, these predictions are based on judgments as to what will likely happen in the future. Thus, it is important for the Congress, particularly the Ways and Means Committee of the House, and the Senate Finance Committee, to periodically assess the judgments that are used by Labor in making its projections.

We expect to issue our reports on the matters we have discussed today this fall. This concludes my prepared statement. We will be happy to answer any questions that the Subcommittee has relating to our review of Labor's approval of black lung benefit claims.

APPENDIX I.—CRITERIA FOR ESTABLISHING DISABILITY OR DEATH FROM BLACK LUNG

LEGISLATIVE CRITERIA

According to the Federal Coal Mine Health and Safety Act, as amended, for a coal miner or his survivors to be eligible for benefits, the miner must have been totally disabled due to pneumoconiosis or his death must have been due to pneumoconiosis. The Act defines pneumoconiosis as a "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairment arising out of coal mine employment." According to the Act," a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines * * *."

The Act requires that all relevant evidence be considered in determining the validity of claims. This evidence includes X-ray examinations, electrocardiograms, pulmonary function studies, physical performance tests, blood gas studies and any medical history evidence submitted by the claimant's physician or affidavits from a surviving spouse. The black lung legislation also contains numerous provisions related to findings of disability or death from pneumoconiosis based on years of coal mine employment, that were incorporated in regulations prepared by the Department of Labor.

GAO CRITERIA

We reviewed the case files for the following information which enabled us to conclude whether medical evidence was adequate to establish total disability or death from black lung or whether there was a question relating to medical evidence.

Medical evidence indicating that the miner had pneumoconiosis; X-rays, autopsies, and biopsies establish the presence of pneumoconiosis. We recognize that X-rays sometimes will not detect simple pneumoconiosis.

Medical evidence indicating that the miner was disabled, including X-rays indicating complicated pneumoconiosis; autopsy and biopsy reports; lung function studies and exercise blood gas studies; and statements of disability by physicians which indicated medical evidence existed to support disability or death from black lung.

Medical evidence indicating that the miner died from pneumoconiosis or other respiratory or pulmonary impairment, including death certificates and autopsy reports that listed a respiratory or pulmonary impairment as the primary or secondary cause of death.

APPENDIX II.—EXAMPLES OF CLAIMS APPROVED BY LABOR [1]

BENEFITS APPROVED BASED ON PRESUMPTIONS

Examples of claims Labor approved based on presumptions while the medical evidence (physical examination or medical test) was inadequate to establish disability or death due to black lung.

In July 1973, Labor received a claim for black lung benefits from a 53 year old former miner with 20 years proven coal mine employment. In July 1973, a pulmonary function test indicated that the claimant was disabled and an X-ray showed that he did not have pneumoconiosis. In December 1973, a physician who examined the claimant said, "The claimant suffers dyspnea and cough as a consequence of the restrictive ventilatory defect associated with his massive obesity" (5′9″, 304 lbs.). The physician also said that he found no definite evidence of parenchymal lung disease. Labor denied the claim in September 1974 citing no evidence of pneumoconiosis. Labor automatically reviewed the claim under the 1977 amendments. The claimant's X-ray showed no evidence of pneumoconiosis and the physician's medical opinion indicated that obesity caused the claimant's problem. Labor in November 1979, approved the claim under its interim presumption of a disease arising out of coal mine employment. The positive pulmonary function test established the presence of a disability. The miner received a retroactive lump sum payment of $21,906 and monthly benefit payments of $381.

In November 1978, Labor received a claim for black lung benefits from a 71 year old former miner with 10 years proven coal mine employment. In May 1979, a physician examined the claimant and the claimant had a positive X-ray for simple pneumoconiosis, a negative pulmonary function test and a negative blood gas test for disability. A B-reader re-read the X-ray for quality and found no evidence of pneumoconiosis. The physician stated that the claimant showed "symptoms of chronic bronchitis of a mild nature but no objective pulmonary impairment." While all the medical tests showed the claimant was not disabled, Labor approved the claim on April 7, 1980, citing the positive X-ray, and its interim presumption of disability arising out of coal mine employment. The miner received a retroactive lump sum payment of $6,114 and a monthly benefit payment of $381.

In February 1977, a 54-year-old former miner with 10 years proven coal mine employment submitted a claim to Labor for black lung benefits. An April 1977 physician's examination concluded that the claimant had advanced general arteriosclerosis that made him unfit for physical work. The physician also stated that the claimant had a mild degree of coal miner's pneumoconiosis that was not disabling. In April 1977, an X-ray showed simple pneumoconiosis and a pulmonary function test indicated no disability. However, a B-reader later re-read this X-ray as negative for pneumoconiosis. On November 15, 1977, the claimant died from cancer. Labor denied the claim on January 24, 1978, because the evidence failed to show the miner was disabled due to black lung. On January 4, 1978, the claimant's widow filed and her claim was reviewed under the 1977 amendments. In June 1979, Labor approved the widow's claim using the 10 years presumption of death due to coal worker's pneumoconiosis, the positive X-ray, and the physician's diagnosis of pneumoconiosis. The widow received a retroactive lump sum payment of $8,045 and a monthly benefit payment of $232.

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[1] Labor's approval of these claims was not contrary to the law; however the approval was based either on provisions in the amended black lung legislation or on interim standards contained in Labor regulations.

A 61-year-old miner filed with Labor for benefits in October 1978. He reported 42 years coal mine employment. During 1979, the claimant took a pulmonary function test and a blood gas test—both with negative results. An April 1979 X-ray was interpreted as positive for pneumoconiosis but re-read by a B-reader (for quality) as negative in May 1979. In May 1979, a physician examined the miner and diagnosed a mild to moderate chronic obstructive pulmonary disease and pneumoconiosis. In August 1979, another X-ray was taken and interpreted as negative and another physical examination indicated the claimant was "neither partially nor totally disabled from coal workers pneumoconiosis. While all medical tests for disability proved negative, Labor approved the claim in June 1979, based on the interim presumption of disability related to years of coal mine employment, the positive X-ray interpretation, and the physician's diagnosis. The miner received a retroactive lump-sum payment of $4,854 and a monthly benefit payment of $381.

In October 1973, Labor received a claim for black lung benefits from a 69-year-old former miner with 24 years established coal mine employment. An October 1973 pulmonary function test indicated that the claimant was disabled. In January 1975, a 1973 X-ray was interpreted as negative for pneumoconiosis. In November 1976 additional tests were conducted that resulted in a positive pulmonary function test, a negative blood gas test, a negative X-ray interpretation for pneumoconiosis, and the physicians' comments that the "claimant is disabled but not on respiratory basis." In December 1979, Labor approved the claim based on the interim presumption of disease related to the years of coal mine employment and the positive pulmonary function studies. The miner received a retroactive lump sum payment of $21,906 and a monthly payment of $381.

BENEFITS APPROVED BASED ON CONFLICTING MEDICAL EVIDENCE

Examples of claims Labor approved based on conflicting medical evidence.

A 58 year old former miner with 10 year proven coal mine employment filed for black lung benefits with SSA in March 1972 and Labor in April 1977. Based on SSA's review of a September 1970 X-ray (negative), a March 1971 X-ray (negative), and a September 1972 pulmonary function test (no disability), SSA denied the claim in May 1973 citing the lack of medical evidence of disability due to black lung.

Based on Labor's review of the above evidence and the following:

(1) a June 1973 X-ray (negative and reread as negative), a November 1976 X-ray (positive and reread as negative), a July 1977 X-ray (negative);

(2) a June 1973 pulmonary function test (disabled), a November 1974 pulmonary function test (no disability), a July 1977 pulmonary function test (no disability), July 1979 pulmonary function and blood gas tests (no disability); and

(3) a June 1973 physical examination (chronic bronchitis, emphysema, and disabled), an October 1976 physical examination (totally disabled due to moderately severe black lung) a July 1977 physical examination (no black lung disability) and a December 1978 physical examination (diabetes, mellitus, coronary heart disease, arthritis, and myocardial infraction).

Labor denied the claim in January 1978 and June 1979 citing a lack of medical evidence of disability due to black lung.

In September 1980, Labor rereviewed and approved the claim citing the medical tests and physical examinations that indicated the miner was disabled due to black lung. The miner received a retroactive lump sum payment of $25,716 and monthly benefit payments of $381.

In June 1976, a 60-year-old miner with 11 years of coal mine employment applied for black lung benefits with Labor. The miner was given a physical examination in October 1976 that included a pulmonary function test that indicated the miner was not disabled and an X-ray that showed the miner had simple pneumoconiosis. The physician diagnosed the miner as having early simple pneumoconiosis but stated he did not consider him having any disability. Labor initially denied the claim in June 1977 citing no evidence of disability.

The miner's claim was re-reviewed under the 1977 amendments. A blood gas test given in March 1979 to the claimant indicated that he was disabled, however, another blood gas test given in May 1979 indicated the miner was not disabled. Labor approved the claim in June 1979 citing the positive chest X-ray as evidence of pneumoconiosis, the March 1979 blood gas test as evidence of disability, and the miner's 11 years of coal mine employment as the cause of his condition. The claimant received $11,619 in retroactive lump-sum benefits and a monthly benefit of $348.

In June 1978, a 70-year-old former miner with 10 years established coal mine employment applied to Labor for black lung benefits. In February 1979 the claimant took a pulmonary function test that indicated the claimant was disabled and a blood gas test that indicated the claimant was not disabled. The X-ray taken during the same month was interpreted as positive for pneumoconiosis and re-read by a B-reader in March 1979 as negative. A physician examined the claimant in February 1979 and diagnosed pulmonary fibrosis and chronic bronchitis due to coal mine employment. Labor denied the claim in June 1979 citing a lack of disability and causality, but approved the claim 1 month later stating that disability, disease and causality had been established. The miner received a retroactive lump-sum payment of $4,799 and monthly benefit payment of $348.

BENEFITS APPROVED BASED ON MEDICAL OPINIONS WITHOUT ADEQUATE COLLABORATING MEDICAL EVIDENCE

Example of claims approved by Labor based on medical opinions.

In February 1974, Labor received an application for black lung benefits from a 76-year-old former coal miner with 11 years proven coal mine employment. In January 1975 a physician concluded from a physicial examination that the claimant had slight pneumoconiosis with no impairment. The claimant's X-ray was negative for pneumoconiosis and his pulmonary function study indicated no disability. Labor initially denied the claim in April 1975 citing no evidence of pneumoconiosis or disability. The miner appealed the decision and had another physician examine him in late April 1975. This physician stated that the claimant had chronic bronchitis and was impaired. The claimant's X-ray and pulmonary function test again indicated no pneumoconiosis or disability. Labor denied the claim a second time in September 1976 citing no evidence of pneumoconiosis or disability. The miner died on December 30, 1978, and his death certificate listed the cause of death as an intracranial hemorrhage brought about by a brain tumor.

In January 1980, the decedent's widow filed a survivor claim with Labor under the 1977 amendments. Information in the file dated March 1980, stated "the treating physician reported an X-ray [taken in 1972, but not in the file] showing minimum interstitual fibrosis, but no treatment for chronic obstructive pulmonary disease. Labor approved the claim in April 1980 citing "the weight of the evidence establish the presence of a disabling respiratory condition." The widow received a retroactive lump sum payment of $18,548 and a monthly benefit payment of $254.

In July 1973, Labor received a claim for black lung benefits from a 73-year old former miner. The miner had 5-years coal mine employment established by a co-worker's affidavit. In July 1973, the claimant was given a pulmonary function test which indicated he was not disabled. A chest X-ray, in December 1973, showed that the claimant had simple pneumoconiosis. A physician examined this miner in 1974 and stated that he had chronic bronchitis and pneumoconiosis due to his coal mine employment. The physician also said the miner was moderately impaired. A blood gas test in April 1975 indicated that the miner was not disabled. Labor initially denied the claim in December 1975 citing no evidence of total disability. Labor reviewed the claim under the 1977 amendments and in May 1979 awarded the miner $19,404 in retroactive lump-sum benefits and a monthly benefit payment of $348.

Labor approved the claim citing the positive X-ray as evidence of black lung and the physicial examination as evidence of disability due to coal mine employment.

BENEFITS APPROVED BASED ON AFFIDAVITS

An example of a claim approved by Labor based on affidavits.

In June 1973, as 57-year-old former miner with 11 years of coal mine employment filed with SSA for black lung benefits. In August 1973, a pulmonary function study indicated no disability and an X-ray showed no evidence of pneumoconiosis. SSA denied the claim (date unavailable) because the claimant lacked evidence of disability due to black lung. The claimant died on September 28, 1977. The death certificate listed his cause of death as myocardial infarction due to arterio sclerotic cardiovascular heart disease. SSA rereviewed the miner's claim under the 1977 amendments and again denied the claim in February 1979 citing a lack of medical evidence.

Labor also re-reviewed the miner's claim under the 1977 amendments and denied the claim in June 1980 citing no evidence of disease or disability.

In the meantime, the claimant's widow had filed a survivor claim with Labor in October 1977. The widow submitted an affidavit from herself, the decedent's brother-in-law, and a friend stating that the miner was asthmatic, had anthrosilicosis and was disabled. On June 2, 1980, (the same day Labor denied the living miner claim) Labor approved the survivor claim on the basis of the affidavits. The widow received a retroactive lump-sum payment of $7,660 and a monthly benefit payment of $254.

BENEFITS APPROVED BASED ON SUFFICIENT MEDICAL EVIDENCE

Examples of claims approved by Labor on the basis of sufficient medical evidence.

A 76-year-old former miner with 16 years coal mine employment filed for black lung benefits with Labor in February 1978. The claimant submitted the findings of a blood gas test and physical examination given in October 1977. The blood gas test showed the miner was disabled and the doctor diagnosed the claimant as having chronic obstructive lung disease and being totally disabled. An October 1978 blood gas test again showed the claimant was disabled and a chest X-ray given at the same time indicated the miner had simple pneumoconiosis. In September 1978 Labor awarded the claimant $3,077 in retroactive lump-sum benefits and a monthly benefits of $439. The claim was approved on the basis of the medical evidence and the physicians diagnosis which indicated the miner was disabled due to simple pneumoconiosis cause by this coal mine employment.

During January 1976, a 57 year old miner with over 20 years proven coal mine employment applied to Labor for black lung benefits. During August 1973, the claimant had an X-ray interpreted as positive and a blood gas test indicating disability. In February 1976, the August 1973 X-ray was re-read by a B-reader as positive and a pulmonary function test indicated disability. Based on a February 1976 physical examination, a physician diagnosed disability from coal worker's pneumoconiosis that was caused by the claimant's coal mine employment. In July 1979, Labor approved the claim, because the file contained evidence that the miner had the disease and was disabled. The claimant received $7,955 in a lump-sum payment and $245 in monthly benefit payments.

In March 1961, a former miner died of arteriosclerosis. The miner's widow filed for black lung benefits with Labor in July 1979. An autopsy showed that the miner had severe multiple sclerosis, black mottling of the lungs, interstitial fibrosis, and emphysema. Labor approved the widow's claim in March 1980 citing the autopsy findings of interstitial fibrosis and black mottling of the lungs which our medical advisor believed was evidence of pneumoconiosis. The miner's widow received $15,366 in retroactive lump-sum benefits and a monthly benefit of $254.

Chairman **Rangel**. Are the other panelists prepared to make a contribution?

Mr. **Tasca**. No. But we would be pleased to answer any questions.

Mr. **Gibbons**. You suggested Congress should periodically review Labor's assessment of the trust fund viability. What is your assessment of the trust fund's viability right now? You know more about it than we do. What is your assessment?

Mr. **Henig**. Right now, Labor predicts, as I indicated in my testimony, that we will have a lower deficit at certain points in the future than, for example, the projections made about 9 months ago, under the previous administration. The main reasons for the difference is that they expect that the interest rates will be somewhat different. They also expect the benefit inflator to be lower.

Benefits under the legislation are based on the salary of a GS-2. If the Carter administration assumed that those salary rates would go up at a higher rate than the Reagan administration assumes they will go up, that will influence the fund considerably. My understanding is that in the new predictions of the current administration, they are assuming less claims will be filed by both the miners and by spouses than the Carter administration assumed. That will have a significant effect.

Mr. **Gibbons**. Why would there be less claims?

Mr. **Henig**. Under the revised regulations, fewer claims are being approved. I am not entirely sure of all the reasons why there would be less claims submitted. It could be that since 1969, when the legislation was initially enacted—the Coal Mine Health and Safety Act—the conditions in the mines perhaps are less conducive to getting black lung. There is less dust. That would be a factor that in the future would result in less claims.

It could also be that Labor believes that more coal mine operators will be held responsible in the future, that there will not be as many demands on the trust fund.

Mr. **Gibbons**. Let me ask you something, while we look around for money, and for coal and the problem of financing out of the industry, has anybody done any studies as to the impact of cigarette smoking on black lung?

Mr. **Henig**. We have had conversations with some people who have done some work in that area. I would like to ask our medical advisor to answer your question, Mr. Gibbons.

Mr. **Gibbons**. Certainly.

Dr. **Grant**. Mr. Gibbons, you ask what obviously is a very difficult question because of the fact that we know that we have good evidence that cigarette smoking produces a number of problems, as does coal dust. What the relationship between the two is, is extremely difficult to determine.

I would suspect that those who succeed us here on the panel from NIOSH may have additional information on that subject, because I believe they have been researching this area quite extensively. I would think it might be more appropriate for them to try to respond.

Mr. **Gibbons**. If cigarettes really are a cause or aggravate the condition, maybe a little Federal excise tax on cigarettes would help us with this. Certainly it would be a lot less damaging to the economy than a tax on coal. It might get more directly to the problem. Just a thought.

I am sure that will make the cigarette industry very happy, particularly their lobbyists when they hear that. But I have been thinking for a long time about substantially increasing Federal excise taxes on cigarettes, and I am just looking around for as much evidence as I can get to do that. I thought maybe this may be an area where we could enter. I see the cigarettes going out around the table here right now.

Mr. **Henig**. When you asked your question, I was lighting mine.

Mr. **Gibbons**. Those are all the questions I have right now.

Chairman **Rangel**. Mr. Duncan.

Mr. **Duncan**. Thank you, Mr. Chairman.

I would like to go back to your statement and Mr. Gibbons also, his question. You say on page 15 that the new standards that apply to claims after March 1980, will result in fewer approved claims. What are the new standards?

Mr. **Henig**. They essentially tighten up the standards for disability and the pulmonary function tests. So they are a little tighter than the old standards.

Mr. **Duncan**. You have had better than 1 year since they put the new standards in effect. What are the results?

Mr. **Henig**. We understand that about 15 percent of the claims now are being approved. When we reviewed the work prior to the new standards, about 45 percent of the claims were being approved. When we applied the new standards to the claims that we had looked at, we found that it would have cut the rate in about half. So that would have brought it down to roughly 22 percent.

Mr. **Duncan**. About 22 percent?

Mr. **Henig**. Well, that is based on the work we have done. They are approving now about 15 percent of the claims that come in. So the new standards appear to result in a reduction in the number of claims approved.

Mr. **Duncan**. Why has it taken the Department of Labor so long to approve or disapprove claims? Sometimes it has gone 1 year, 2 years. People die in the meantime. Would you answer that?

Mr. **Henig**. I would say that the more difficult cases probably take longer to approve. They are the ones that were probably put aside, and the claims examiners would probably pick those cases which are relatively easy to make a determination.

Mr. **Duncan**. Everytime we would inquire about one that had been a year or two old, the excuse was that we have so many cases to handle, or it was lost in the computer, which is the modern way of saying we haven't done our job. Have they that many cases? They don't have that many people? They don't have enough people handling them?

Mr. **Henig**. I would like to turn it over to Mr. O'Bryan.

Mr. **O'Bryan**. Yes, I would like to comment on that.

I think Social Security had roughly 80,000 claims that they had to review. The legislation provided that Social Security would go back to a claimant that had a previously denied claim and give him the option of having the claim re-reviewed. They also gave him the option of having SSA review it or the Department of Labor review it.

If the claimant elected for re-review by Social Security and it was not approved, then it was given to Labor for review. So Labor had in the neighborhood of roughly 60,000 social security claims to re-review.

In addition, Labor had a backlog at one time that was close to 240,000 claims. It was quite large. I don't know if we have the exact figure, but it was significant. Labor re-reviewed all previously denied claims that they were responsible for. Then they also re-reviewed all social security claims that Social Security looked at and did not approve. In addition, the legislation provided that Labor could develop additional medical evidence to support the claim.

With the legislation, the congressional intent was to give the benefit of the doubt to the claimant. So, in many instances, where there was some indication that there was a black lung problem, additional tests were given.

Mr. **Duncan**. Have they been able to correct that? Are they able to expedite them better than they did?

Mr. **O'Bryan**. Well, we issued a letter report on this subject to then Senator Schweiker. We found that it took quite a while, but Labor reorganized, set up eight district offices plus the Johnstown office, and hired additional staff. After they geared up, they significantly reduced the backlog. I think currently the backlog has almost been eliminated.

Mr. **DUNCAN**. How many people are handling those claims?

Mr. **O'BRYAN**. There were eight district offices plus an office in Johnstown which basically handled the social security claims.

Mr. **DUNCAN**. What does the Jacksonville office do?

Mr. **O'BRYAN**. I think that Jacksonville must——

Mr. **HENIG**. The Department of Labor Jacksonville office?

Mr. **DUNCAN**. Yes, sir.

Mr. **HENIG**. I think they handle Federal employees' compensation claims. I don't think they are in black lung.

Mr. **DUNCAN**. We have had black lung cases from my area down there that has been lost or something through the years. Also some of the other cases that they have.

Mr. Chairman, I think that is all the questions I have. Thank you.

Chairman **RANGEL**. Mr. Ford.

Mr. **FORD**. Thank you, Mr. Chairman.

I just have one question here. I was reading on page 15, I guess, in the conclusion, where you talk about Labor's new standards that apply to claims filed after March 30, 1980, will result in fewer approved claims.

I would like to know, do you think the Labor Department does an adequate job of seeking to recoup payments to beneficiaries that are incorrect or excessive?

I know you go on to say "However, because these standards do not address the provisions in the amended legislation for approval of benefits to problems that relate to inadequate medical evidence, will continue."

Mr. **HENIG**. We have no problem with the manner in which Labor was adjudicating the claims. They were following the standards in the legislation. They were not doing what could be categorized as a sloppy job of claims adjudication. That wasn't the problem. They are doing a pretty good job.

Mr. **FORD**. So you feel they are doing an adequate job in approval of payments?

Mr. **HENIG**. Yes, sir.

Chairman **RANGEL**. There was a heavy inference in the response that perhaps the problem was in the legislative standards rather than how they administered it.

Mr. **HENIG**. Yes, sir; that would be our conclusion.

Chairman **RANGEL**. Well, recognizing the goals of the Congress in trying to protect those people with the occupational disease, do you believe that the standards are realistic, or are they political? I don't mean to put you on the spot.

Mr. **HENIG**. Yes.

Chairman **RANGEL**. I am just asking——

Mr. **HENIG**. We felt that there are ways of determining medically whether a person has black lung and whether a person is totally disabled.

Chairman **RANGEL**. OK. Are we doing that?

Mr. **HENIG**. We don't believe that the legislation—we think it could be changed, if you want to determine black lung, and if you want to determine total disability on medical basis.

Chairman **Rangel**. In your report do you suggest how we could better target the benefits for those that have acquired an occupational disease without excluding people that should receive some type of consideration, if not full benefit?

Mr. **Henig**. We are not quite finished with our review.

As I indicated, we will issue those reports later this year. When we issue our report, we expect to have recommendations to the Congress for that.

Chairman **Rangel**. Based on what you have already done, out of the cases you reviewed, 85 percent did not reach even those legislative standards that were set?

Mr. **Henig**. No, they met the legislative standards, but we found that there was not enough evidence of disability or pneumoconiosis.

Chairman **Rangel**. So we don't know whether additional information would have found them eligible or ineligible?

Mr. **Henig**. That is correct.

There was sufficient evidence for Labor to make the decision. But we found that the evidence was sometimes conflicting, or sometimes the evidence was almost nonexistent for determining disability, but it was based on presumptions or affidavits.

Chairman **Rangel**. Now, the other departments have had an opportunity to review that part of your report that has been made public. Have they submitted to you supplemental information to approve your findings?

Mr. **Henig**. Social Security had no comments on our findings.

Chairman **Rangel**. How about Labor?

Mr. **Henig**. Labor has not had an opportunity. We have not issued a report yet on the review of Labor's administration of the program. So we do not know what Labor's views will be until we give them a copy of the draft report.

Chairman **Rangel**. You have no problem with the credibility of your report based on the smallness of the sample? You are not complaining that you did not have enough time or enough staff? Are you satisfied that your sample is the best that can be expected under the circumstances?

Mr. **Henig**. Yes, sir. It was a valid random sample, and it is projectable to the universe of claims with, our statisticians say, 95 percent reliability, plus or minus about 4 percent.

Chairman **Rangel**. I am really trying to set some type of a record here to be able to turn over to the full committee. Do you know whether the administration had available to it other information in its program for economic recovery which they have issued which indicates that a "Recent GAO sampling of eligibility certifications found that an astonishing 88 percent of all the claimants certified as eligible were either not disabled"—actually you said that evidence was not adequate to establish disability—"or else could not be proved to have black lung"—which is what you have said. Does the report which the Administration cites cover all black lung claims, including those filed with the Department of Labor, or only claims to Social Security?

Mr. **Henig**. Our earlier report on the re-review of claims by Social Security is what the Administration is referring to in their comments.

Chairman **Rangel**. Did you reach a determination based on your sample as to the claimants that have been certified as eligible and receiving benefits as not, in fact, being eligible?

Mr. **Henig**. They were eligible based on the legislation, the 1977 amendments.

Chairman **Rangel**. Did they in fact prove to have black lung?

Mr. **Henig**. Our conclusion was that—I think in 88 percent of the cases—we could not determine that they either had black lung or that they were totally disabled from black lung. That was the conclusion we reached, there was inadequate medical evidence to determine black lung or disability.

Chairman **Rangel**. So your problems were with the standards?

Mr. **Henig**. Yes, sir.

Chairman **Rangel**. That were used.

Mr. **Henig**. Not with the Department of Labor or Social Security's adjudication of the claims.

Chairman **Rangel**. You will be making recommendations in your final report as to a tight medical standard to use so that we will know who has black lung?

Mr. **Henig**. We will probably couch it in terms of matters for consideration of the Congress; if you want to pay for disability, if you want to have good medical evidence, this is what you would have to do.

Chairman **Rangel**. I suspect that some other department will be giving us information as to what the economic impact will be on coal compared to other fuel sources, and what it means with each additional increase in tax.

Did your report go into that?

Mr. **Henig**. We haven't finished all our work on the trust fund. We do know that changes in coal production or changes in the tax on coal production will have a very significant impact on whether you are going to have a surplus or a deficit in the trust fund in the future. A lot depends on what you think the rate of coal production might be in the future.

Chairman **Rangel**. In what cases do we have the Department of Labor attempting to get recoupment of payments? Do we have those kinds of cases going on now where people file claims, found to be eligible, that are not indeed eligible?

Mr. **O'Bryan**. If I might answer that, Labor makes an effort to try to recoup a claim that is an erroneous payment or if the decision is made that the claimant was not entitled to the payments made, then labor makes an effort.

Chairman **Rangel**. How does Labor decide who is receiving payment that should not have received payment?

Mr. **O'Bryan**. In one case where it would work, if a case is contested by a responsible operator and the determination is made that the individual is not entitled to benefits; the money would have been paid from the trust fund and Labor would make an effort to recoup it.

Mostly, a very high percentage of claims that should be paid by a responsible operator are currently being paid from the trust fund until that case is settled.

Chairman **Rangel**. I see. So if the claim is denied on appeal then the trust fund attempts to recoup its money. Out of all of the claims that are being paid either prematurely or perhaps even without justification, what percentage of that could you just guess comes out of the trust fund as opposed to state compensation or the industry?

Mr. HENIG. I couldn't even guess at that, Mr. Chairman.

Chairman RANGEL. Well, could you guess as to whether or not we could get out of this without increasing the taxes? Namely, could this committee find some other ways to get the money without us using our jurisdiction, which is really just raising money?

Mr. HENIG. Mr. Chairman——

Chairman RANGEL. Could you shift more of the responsibility to the industry, or shift it to the States, or does it look like we will be required to increase the tax on coal?

Mr. HENIG. It depends on what scenario you want to use, what the future is going to hold as far as coal production is concerned. That is probably the biggest single variable that is going to have an impact on the trust fund revenues.

Chairman RANGEL. It looks like the Camp David thing means that we will be heavily involved in oil.

Does it look like the trust fund could survive, using your evidence standards, making it clear that the Congress will be looking for those that are adversely medically affected by coal employment? If we use those standards that will deal with those that are adversely affected healthwise, does it look like we still have to increase our tax?

Mr. HENIG. If you don't increase taxes, based on the projection that I discussed this morning in my testimony there will be a deficit in the future if the other values Labor assigns to its variables remain the same. They will have a deficit of a couple billion dollars in the future.

Chairman RANGEL. Just for borrowing from the Treasury?

Mr. HENIG. Well, it is because they have a deficit now and they have to borrow from the Treasury and they do not anticipate that the revenues coming in from production will be enough to wipe out that deficit over time.

It will reduce the deficit but there will still be a deficit in the year 1995 and there will still be a deficit in the year 2010 if there is no increase in the tax, and coal production remains about what it is now.

Chairman RANGEL. Mr. Gibbons, how does this work? If we want to restrain ourselves from raising the tax, we don't have jurisdiction to tighten the eligibility. That is another committee. So how do we work that out together? Suppose a lot of people were not eligible, namely that just being in the industry does not entitle one to benefits, yet we are providing the money for them through the trust fund with the tax on coal.

How would you work out that difference if the other committee just maintained that they should be eligible? Should we just follow suit and meet whatever criteria they have?

Mr. GIBBONS. Mr. Chairman, you have asked a good question and one we have been struggling with.

As you know, Mr. Ullman had a very restrictive view toward this and wouldn't let us get involved in the substance of other committees' legislation.

About the only tool we had then was to provide a little money in order to keep the rein very tight. I would hope within the budget reconciliation process we can work out some changes there. Perhaps that is a better way of handling it than we have handled it in the past.

In substance, it has just been whatever jawboning we could do with the other committee under Mr. Ullman's interpretation of how the rules were.

As we meet with these other committees in conference on reconciliation, we have a greater leverage.

Chairman RANGEL. Well, I assume that we would not want to limit the authority—but it would seem to me that we would have an obligation to those other services that people need to try to bring some balance as to everyone's sacrifice.

Mr. GIBBONS. It is a matter of balance.

Chairman RANGEL. Are there any questions that the committee members have that they may think that the full committee might want to have?

Mr. GIBBONS. Let me ask one other. I know one of our witnesses a little later on today is saying that since the backlog of these claims has largely been cleared up, and that from now on all we are going to have is the working population and the mine to deal with, and since most of those will have an employer, you can pin the blame on for the injury or the disease, that the drain on the Treasury should drop off.

What is your opinion of that?

Mr. HENIG. That probably should happen, but the coal mine operators can controvert their responsibility. If they are successful in saying that they are not responsible in a large number of cases, that will still result in a drain on the trust fund.

It depends on how successful they are in determining whether they are responsible or not.

Mr. GIBBONS. We obviously have a larger payout in the trust fund now because we have picked up all the back cases, old cases.

I think one of the witnesses is going to testify that we were taking in cases at the rate of about 25,000 a year last year, and that now it will probably drop down to an 8,000 or 9,000 a year annual rate; that in this 8,000 or 9,000 annual rate, the coal company will be responsible for most of these disease or injury claims.

Was that taken into consideration when you made your appraisal as to the soundness of the trust fund?

Mr. HENIG. Yes; the Department of Labor factored that into their projections. They assumed that at a certain point in time very few claims would be against the trust fund.

I am not sure exactly what year that will happen. They get almost to zero. Maybe 2 or 3 percent, something like that. That is an important factor. If they are correct in that assumption, then it would result in the trust fund not paying out that much. If instead of 2 or 3 percent it is 15 or 20 percent, then that is going to have a significant impact on their projection.

I don't know if we have a good enough record at this particular point to say what it will be in the future. That is somebody's judgment based on what they think is going to happen.

Mr. GIBBONS. Administratively, is there anything we can do?

I am not talking about now, making the decision about whether a person has black lung or not, but, for instance, there are supposed to be State awards as well as these Federal awards. Has there been adequate checking to see that the State awards have not been paid, or taken into consideration whether the Federal awards were paid?

Mr. HENIG. Are you talking about workers' compensation?

Mr. GIBBONS. Yes, sir.

Mr. HENIG. There is supposed to be an offset.

Mr. GIBBONS. Supposed to be an offset. That is correct.

Mr. HENIG. Labor has provided us some information about the offset.

Mr. O'BRYAN. We did limited tests in the State of Pennsylvania. We found there was a problem. Not all payments were being reduced by the amount of payment by the State. We did not have time to go into it in great detail and review other States, but we found that it was a problem in Pennsylvania. The problem related mainly to cases, where a decision had not been made, where it was pending. Labor would make an effort to check to see whether the State payment was being made, but if at a later date, the State made a decision and an award, then the Federal Government—Labor—was not reducing the Federal payment.

Chairman RANGEL. Why weren't they doing this? Why would not the Federal Government reduce this payment?

Mr. O'BRYAN. Well, Labor has a program that initially, when the claim is approved, contact the State and if a reply is not received within about a week, a followup contact will be made to get the answer as to whether the State payment was being made.

But we found there was a problem in cases where the State claim was pending. Possibly for a hearing in which case the decision would be made at a later date.

In those cases where the decision was favorable to the claimant, then Labor was unaware. Labor's program was not able to identify that the State was making the payment. So, in fact, they were receiving the payment from both——

Chairman RANGEL. Let me try to clear it up. Are we saying that your study showed that people received eligibility from payments from the trust fund while the State case was pending?

That whether the claimant was successful in the State case and actually received workers' compensation, that the Federal trust fund payment continued? Is that what you are saying?

Mr. O'BRYAN. Yes, that is true.

Chairman RANGEL. Why are you saying this so casually? If this was an AFDC case, you would be talking about fraud and putting somebody in jail. Who has the responsibility to determine whether or not a person is receiving funds from the State as well as the Federal Government?

I mean, does the recipient have to say that "This is my sole payment," or does the Federal Government say "It doesn't really make any difference. Get what you can from the State."

Mr. HENIG. I guess it was a flaw in Labor's procedures of following up on those claims which were pending.

We brought this matter to Labor's attention and they have advised us that they have some studies under way to try and correct that kind of a problem.

Chairman **Rangel**. There is no obligation, you are saying, on the recipient to notify the Federal Government that they are no longer eligible for the same Federal payment because they are receiving State payments?

Mr. **Henig**. I don't know what the requirement is on the recipient. They would be entitled to both payments, but there should be an offset of the black lung payment by the amount that they receive in workers' compensation. This is the same in other disability——

Chairman **Rangel**. I don't want to get restricted to technical language, but you are talking about double-dipping, no matter how you look at it. It is legal in a lot of areas, social security, retirement, and all of those things.

I am asking whether what you are suggesting is happening is legal.

Mr. **Henig**. It is not supposed to happen.

Mr. **O'Bryan**. I believe there is a letter that goes to the claimant where it is pointed out that the claimant is supposed to notify the Department of Labor if he is receiving a State payment, or there is a change in the amount. Many times that never happens.

Chairman **Rangel**. Maybe I will have our staff take a look into that and let me know. Let me congratulate the General Accounting Office for the unbiased, unprejudiced work that you have done in the past, and hope that, as we move forward to more restricted resources being made available, the Congress can continue to rely on your impartial observations so as to make certain that we do the best that we can for the American people with the more limited resources we have.

I say this not because I think that there has been any shifts in those high standards that you have set for yourself, but I do see where you are going to be called upon more and more by the Congress to evaluate more and more programs.

I hope that when it reaches the point that you feel resources are being restricted and that you can't do the job, that it is better that you let us know before we call upon you than to use resources or lack of resources as an excuse for not being able to continue to do a professional job which, in my opinion and everybody I have talked to, there are no problems.

I will move on to the next witnesses. Thank you for your testimony.

Mr. **Henig**. Thank you for your kind remarks.

[The following letter was subsequently received:]

U.S. General Accounting Office,
Washington, D.C., September 11, 1981.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight,
Committee on Ways and Means.

Dear Mr. Chairman: Your August 21, 1981, letter asked us to (1) provide information on the status of our audit work related to black lung benefit claims approved by the Department of Labor and the computer model Labor used to predict the financial condition of the Black Lung Disability Trust Fund and (2) respond to statements by Dr. Lorin E. Kerr in an August 4, 1981, edition of the Washington Star.

This letter contains the requested information and supplements our July 27, 1981, testimony before your Subcommittee.

At the request of Congressman John N. Erlenborn, we are conducting reviews of Labor's approval of black lung benefit claims and Labor's computer model that predicts the future financial condition of the Black Lung Disability Trust Fund.

We expect to issue our report on Labor's approval of black lung benefit claims about mid-November 1981. Because work on the Trust Fund model report has temporarily been deferred in order to develop additional information requested by your staff on August 26, 1981, we expect to issue that report about mid-December 1981.

At this time, we expect our report on Labor's approval of black lung benefit claims to include matters for congressional consideration rather than recommendations to the Congress. We would expect our report on the Trust Fund model to include a recommendation to the Congress similar to that contained in our July 27 testimony.

We will provide the Subcommittee with copies of these reports when they are issued and we will brief your staff on our work related to the Trust Fund model before the Subcommittee's September 1981 hearings.

On August 4, 1981, the Washington Star published an article by Dr. Lorin E. Kerr which criticized our report, "Legislation Allows Black Lung Benefits To Be Awarded Without Adequate Evidence of Disability" (HRD-80-81, July 28, 1980). Our report discussed the Social Security Administration's approval of black lung benefit claims re-reviewed under the 1977 amendments to the Federal Coal Mine Health and Safety Act. Our responses to your questions concerning the article follow:

(a) "The investigation of SSA was conducted solely to determine whether its approval of claims compiled with the 1977 Act. GAO concluded that 'approval of those claims was not contrary to law.' "

What was GAO requested to study and what were the purposes of the investigation?

In March 1979, Congressman Erlenborn requested our office to investigate the Social Security Administration's (SSA's) procedures for re-reviewing denied and pending black lung benefit claims. SSA re-reviewed these claims under the 1977 amendments to the Federal Coal Mine Health and Safety Act. Congressman Erlenborn's request included questions related to (1) whether SSA's criteria for reviewing these claims exceeded the limits of the 1977 amendments, (2) how many times SSA could re-review a denied claim, and (3) whether the Department of Labor applied more liberal eligibility criteria in its review of black lung claims.

Based on our review of a random sample of SSA re-reviewed and approved black lung claims, we advised Congressman Erlenborn's staff that SSA had not exceeded its authority in approving these claims. We noted, however, that although SSA's approval of these claims was not contrary to the law, many claim files contained (1) no medical evidence, (2) conflicting medical evidence, or (3) unsupported medical evidence of disability or death due to black lung. Because most of these claims were approved, in our opinion, without adequate medical evidence of disability or death due to black lung, we reported to the Congress our belief that medical evidence should be the basis for determining a claimant's eligibility for black lung benefits.

Our current review of the Department of Labor's basis for approving black lung benefit claims was also initiated at the request of Congressman Erlenborn. Our July 1980 report on SSA's approval of claims re-reviewed under the 1977 amendments contained only conclusions. Congressman Erlenborn subsquently asked us to identify possible legislative changes that would be necessary to ensure that black lung benefits are awarded only to miners who are totally disabled from black lung or to their survivors.

(b) "The GAO declared that disability should be based solely on medical evidence, but it neither defines what is meant by 'disability' nor what medical evidence would be conclusive."

Did GAO provide in the report the criteria used to define disability? Did GAO state what evidence could be considered conclusive?

Chapter 3 of our July 1980 report on SSA's approval of black lung benefit claims discussed our criteria for establishing disability from black lung. We tried to answer the following questions in determining whether the medical evidence was adequate to establish total disability or death from black lung. First, did the claimant have black lung, and second, did the claimant's pulmonary function or blood gas test results meet SSA's permanent standards for establishing disability?

The pulmonary function test values contained in SSA's permanent standards differ from values contained in SSA's October 1972 interim standards. According to the May 1977 Senate Committee on Human Resources' report on the bill to amend the Federal Coal Mine Health and Safety Act, SSA maintained that its interim standards do not accurately determine actual disability. These standards were used only to clear away the backlog of claims arising from the 1972 amendments, and the permanent standards more accurately identify disabling respiratory and pulmonary functions in coal miners. Therefore, we used SSA's permanent standards for determining whether a claimant was disabled. If we had used SSA's interim standards for determining disability instead of the permanent standards, there would have been a slight increase in the number of cases with sufficient medical evidence to establish disability.

In determining disability, we did not make judgments as to whether the miner could or could not engage in coal mine employment, but used the medical test values for pulmonary function and blood gas tests contained in SSA's permanent standards. In cases in which a physician states that a miner was disabled, we looked for other medical evidence that would support such a statement. If the medical evidence—pulmonary function or blood gas test results—did not support the physician's statement of disability and if there was no other evidence of disability, we considered the physician's statement to be inadequate medical evidence of disability.

For our review of Labor's approval of black lung claims, we used the same criteria as used during the SSA review. However, in evaluating the medical evidence for determining disability, we used the pulmonary function test values contained in Labor's interim standards. According to the 1977 amendments to the black lung legislation, Labor's standards could not be more restrictive than the standards used by SSA before July 1, 1973.

(c) GAO's findings were based on "the subjective opinion of only one physician [who is not] a radiologist [and] has no experience in respiratory or pulmonary diseases."

Does GAO stand by the judgment of its medical consultant? Please elaborate.

As we stated in our July 1980 report on SSA's approval of black lung claims, the medical evidence, in most cases, was not adequate to establish a coal miner's disability or death from black lung. GAO staff, assisted by our medical advisor, made judgments with respect to the adequacy or inadequacy of the medical evidence used to establish disability or death from black lung.

In making these judgments we considered the following factors:

Did the claim file contain medical evidence?

Did other medical evidence in the file conflict with the medical evidence used to support a claim's approval?

Was a physician's opinion of the claimant's disability supported by other medical evidence, such as pulmonary function or blood gas test results?

We also discussed our findings related to the adequacy of the medical evidence with SSA. SSA agreed that our report was factually correct; the conclusions were valid; and for most claims, the medical evidence was not adequate to establish disability or death from black lung. SSA said that the legislation was amended to permit approval of claims without medical evidence of disability. We agreed with this assessment.

The most significant issue is not whether we should try to determine the adequacy or inadequacy of medical evidence for specific cases, but rather whether it is possible to obtain adequate medical evidence to establish eligibility for black lung benefits. Our medical advisor discussed the diagnosis of pneumoconiosis and the determination of disability—as defined in standards used by SSA—with numerous pulmonary and respiratory specialists. We support the judgments of our medical advisor and believe that coal workers' pneumonoconiosis can be diagnosed and that the medical tests, particularly the pulmonary function test, can be used with a high degree of accuracy and reliability to determine disability.

Furthermore, where conflicting medical evidence or an unsupported physician's opinion of pneumoconiosis and disability exists, we believe that efforts should be made to resolve the difference or to obtain additional evidence.

(d) GAO criticized the use of affidavits by widows in cases of deceased miners although the 1977 black lung amendments permitted this practice.

How many cases in your study were approved on the basis of affidavits without any accompanying medical evidence?

SSA used affidavits to establish disability or death due to black lung in 78 of the 200 cases we studied. SSA approved 51 of these 78 claims without any accompanying medical evidence—X-rays or pulmonary function tests or blood gas tests—of disability or death from black lung. Sixteen claims had medical evidence which indicated that the miner did not have black lung or was not disabled by black lung, and 11 had evidence of black lung but no evidence of disability. In addition to these claims being approved without adequate medical evidence of disability or death from black lung, we noted that in 68 of the 78 cases (87 percent) the person who signed the affidavit had a self-serving or vested interest in the outcome of the claim.

We believe that medical evidence should be the primary basis for approving black lung benefit claims. We recognize that without affidavits many survivors of miners who died before the passage of the Federal Coal Mine Health and Safety Act in 1969 might have had more difficulty in establishing their eligibility for black lung benefits. However, we believe that, because of the widespread publicity given to the black lung program since its establishment and because miners currently have the opportunity to have periodic chest X-rays to determine the presence of pneumoconiosis, the need to rely solely on the use of affidavits to establish eligibility for black lung benefits has been greatly diminished.

During our review of Labor's approval of black lung benefit claims, we found that, of the 205 Labor-approved claims, Labor used affidavits to approve only 7 of them—6 of these claims had no accompanying medical evidence and 1 claim had medical evidence that the miner was not disabled.

We trust that this information is responsive to your request.

Sincerely yours,

EDWARD A. DENSMORE
(For Gregory J. Ahart, Director).

Chairman RANGEL. We have now Dr. J. Donald Millar, Director for the National Institute for Occupational Safety and Health, and Dr. James A. Merchant, Director, Division of Respiratory Disease Studies.

We have your full statement. You can, Doctor, take advantage of some of the questions that we don't have answers for and incorporate that in your testimony, or wait until you conclude.

Whatever you find comfortable, but thank you for taking time to help us figure out some answers to this serious problem.

STATEMENT OF DR. J. DONALD MILLAR, DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, AS PRESENTED BY DR. JAMES A. MERCHANT, DIRECTOR, DIVISION OF RESPIRATORY DISEASE STUDIES

Dr. MILLAR. Thank you, Mr. Chairman. I am the newly appointed Director of the National Institute of Occupational Safety and Health.

Chairman RANGEL. They tell me you wouldn't have much to do under this administration, but I don't believe that.

Dr. MILLAR. NIOSH is a part of the Centers for Disease Control of the Public Health Service and it is our mandate to conduct research and training and to disseminate information to protect the safety and health of American workers.

On my right is Dr. Merchant, Director of our Division of Respiratory Disease Studies located in Morgantown, W. Va.

Dr. Merchant is a widely acknowledged expert in occupational respiratory disease, and I have asked him, with the chairman's permission, to present our testimony at this time.

Chairman RANGEL. Very good. Without objection.

Dr. MERCHANT. Mr. Chairman, historically the U.S. Public Health Service played an important role in defining the respiratory risk miners face when they mine coal.

Public Health Service studies of anthracite miners in Pennsylvania in the early 1930's showed clearly that miners developed pneumoconiosis and were at increased risk of respiratory infections, especially tuberculosis.

These studies also related the risk of pneumoconiosis to dust levels in mines.

Similar observations had been made in Great Britain which by 1940 had led to the definition of coal workers' pneumoconiosis as a medical entity distinct from silicosis, to a compensation program for disabled British miners, and to the establishment of the Medical Research Council's Pneumoconiosis Research Unit.

Despite these developments in Britain, coal workers' pneumoconiosis was not officially recognized in the United States until the 1960's when the U.S. Public Health Service conducted an extensive investigation of Appalachian coal miners. This study, conducted by the Bureau of Occupational Safety and Health, now NIOSH, showed that coal workers' pneumoconiosis was prevalent among soft coal miners. This in part helped the passage of the Coal Mine Health and Safety Act in 1969.

Together with the extensive British epidemiological data on coal miners, this study provided important support for a strict respirable dust standard, for medical surveillance for miners, and for fair and equitable compensation for disabled miners.

Since passage of the act, NIOSH has continued to conduct both epidemiologic and laboratory research on respiratory disease among coal miners. These studies, together with those conducted in Great Britain, have given us a much better understanding of the nature of respiratory disease suffered by coal miners, its prevalence, and its causes.

Coal workers' pneumoconiosis, or CWP, is a distinct disease characterized by the development of coal macules, coal nodules—simple CWP—and a second type, progressive massive fibrosis [PMF] which results from deposition of coal mine dust in the lung and the lung's reaction to that dust.

Black lung is a legislatively defined term which encompasses CWP but also includes other respiratory diseases which may arise from the coal mine environment.

Research has shown that in addition to causing simple CWP and PMF, chronic inhalation of coal mine dust leads to bronchitis, sometimes called industrial bronchitis, and airways obstruction.

Airways obstruction is not markedly worse among miners with simple CWP compared with miners without CWP, but is marked among miners with progressive massive fibrosis. Hence miners found to have PMF are usually severely impaired.

Airways obstruction and bronchitis have, however, been found to be significantly greater among coal miners, regardless of CWP status, than among suitable community controls.

Two important causes, or risk factors, have been found to be responsible for this chronic obstructive lung disease among miners: coal mine dust and cigarette smoking. As a result, black lung, which includes classical CWP—caused by inhalation of coal mine dust—and chronic obstructive lung disease—caused by coal mine dust and other factors, including smoking—encompasses at least two disease processes and is caused by many factors.

Further, while CWP may be diagnosed specifically by use of the X-ray, airways obstruction can be detected only by use of the nonspecific pulmonary function test. Because of the many factors in the etiology of black lung and the nonspecificity of some medical tests needed in diagnosis, there is often a lack of understanding of this disease by both the miner and his doctor.

Questions are often raised as to whether lung cancer is more frequent among coal miners. Although mortality studies show clearly that disease and accidents are increased among coal miners, lung cancer does not appear to be increased.

Recent data do, however, suggest that stomach cancer is more prevalent among miners and that it may be related to their coal mine dust exposure. Research is continuing in this area.

The national coal workers' health surveillance program is conducted by NIOSH at its Appalachian laboratory, provides each new miner with an initial and periodic free medical examination.

The third round of these examinations will be completed in August of this year. Results from the second round of examinations are shown in table I and parts of the third round results in table II.

As you can see by looking at table I, some 5.8 percent of the miners examined in round 2, some 107,000 miners, 5.8 percent, were found to have some category of coal workers' pneumoconiosis on their X-ray. These categories are based upon international standards. The category I is the lowest amount of coal workers' pneumoconiosis, category 3 is the highest amount of simple coal workers' pneumoconiosis, and the progressive massive fibrosis, the large massive lesions sometimes found in coal miners is a separate category.

Clearly coal workers' pneumoconiosis, as so defined, becomes more severe and more prevalent with increasing years underground.

The disabling PMF is found mainly among men with 20 or more years underground, reflecting a dust exposure higher than that now found in U.S. coal mines.

Following mandating of the 2 milligram-per-cubic-meter standard by the 1969 Coal Mine Dust and Safety Act, dust levels have generally been well controlled in U.S. mines, now averaging less than 1.5 milligrams per cubic meter.

Results from our third round of examinations may begin to show the effects of improved dust control, but because of the chronic nature of these diseases this is not yet clear.

Because our surveillance program relies only on the chest X-ray, we must rely on our national study of coal workers' pneumoconiosis to estimate the prevalence of bronchitis and persistent breathlessness—as assessed by standardized questionnaire—and lung function impairment—as assessed by standardized pulmonary function testing.

The study is a prospective one involving approximately 40 coal mines nationwide and over 9,000 miners per round.

The prevalence of bronchitis, persistent breathlessness and significant airways obstruction among miners in the second round of this study are shown in table III.

As you see, bronchitis is found in over 40 percent of the miners, severe shortness of breath in over 11 percent, and significant airway restriction as defined by pulmonary airway testing in just under 25 percent. Dust control in mines is expected to also reduce these health effects. However, cigarette smoking and other factors contribute significantly to these entities. Therefore a significant proportion of miners, especially those who smoke, will continue to be affected by chronic obstructive lung disease—even at low dust levels.

It is difficult to project the prevalence of CWP and airways obstruction over the next 10 years with confidence. When data from the third round of our national study of CWP and the National Coal Workers' Health Surveillance program are available, some estimates could be made.

Meanwhile, assuming current trends, and that assumption would include that diesel-powered equipment would not be widely introduced into underground mining, our knowledge of the epidemiology of these diseases leads us to conclude that CWP, chronic bronchitis and airways obstruction will all be less than the levels shown in tables II and III.

In summary, coal workers' pneumoconiosis and associated chronic obstructive pulmonary disease are major occupational diseases among our Nation's coal miners.

Passage of the Coal Mine Health and Safety Act of 1969 provided the means to control dust exposure and provide medical examinations as methods to prevent serious lung disease among coal miners.

With improved dust control, classical CWP should decrease to a very low level. Chronic airway obstruction attributable to coal mine dust should also decrease, but will remain an important public health problem among coal miners unless cigarette smoking is similarly reduced.

As a result, we must work on two fronts to prevent chronic lung disease among coal miners.

First and foremost, continued vigorous control of dust exposure in the mines and, second, reduction of cigarette smoking.

Mr. Chairman, this concludes our testimony. We will be pleased to answer any questions.

[The prepared statement follows:]

STATEMENT OF DR. J. DONALD MILLAR, DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL, PUBIC HEALTH SERVICE

Mr. Chairman, my name is Dr. J. Donald Millar, the Director of the National Institute for Occupational Safety and Health (NIOSH). NIOSH is part of the Centers for Disease Control in the Public Health Service. Its mandate is to conduct research, training and to disseminate information to protect the safety and health of American workers. Accompanying me today is Dr. James A. Merchant, Director of our Division of Respiratory Disease Studies in Morgantown, West Virginia. We are pleased to participate in these hearings and share with this committee the results of NIOSH research and medical surveillance on coal workers' pneumoconiosis and black lung.

Historically, the United States Public Health Service played an important role in defining the respiratory risk miners face when they mine coal. Public Health Service studies of anthracite miners in Pennsylvania in the early 1930's showed clearly that miners developed pneumoconiosis and were at increased risk of respiratory infections, especially tuberculosis. These studies also related the risk of pneumoconiosis to dust levels in mines. Similar observations had been made in Great Britain which by 1940 had led to the definition of coal worker's pneumoconiosis as a medical entity distinct from silicosis, to a compensation program for disabled British miners, and to the establishment of the Medical Research Council's Pneumoconiosis Research Unit.

Despite these developments in Britain, coal workers' pneumoconiosis was not officially recognized in the United States until the 1960's when the U.S. Public Health Service conducted an extensive investigation of Appalachian coal miners. This study, conducted by the Bureau of Occupational Safety and Health (now NIOSH), showed that coal workers' pneumoconiosis was prevalent among soft coal miners; it was instrumental in passage of the Coal Mine Health and Safety Act of

1969. Together with the extensive British epidemiological data on coal miners, this study provided important support for a strict respirable dust standard, for medical surveillance for miners, and for fair and equitable compensation for disabled miners.

Since passage of the Act, NIOSH has continued to conduct both epidemiologic and laboratory research on respiratory disease among coal miners. These studies, together with those conducted in Great Britain have given us a much better understanding of the nature of respiratory disease suffered by coal miners, its prevalence, and its causes.

Coal workers' pneumoconiosis (CWP) is a distinct disease characterized by the development of coal macules, coal nodules (simple CWP) and progressive massive fibrosis (PMF), which results from deposition of coal mine dust in the lung and the lung's reaction to that dust. Black lung is a legislatively-defined term which encompasses CWP but also includes other respiratory diseases which may arise from the coal mine environment. Research has shown that in addition to causing simple CWP and PMF, chronic inhalation of coal mine dust leads to bronchitis, sometimes called "industrial bronchitis," and airways obstruction. Airways obstruction is not markedly worse among miners with simple CWP (compared with miners without CWP), but is marked among miners with PMF. Hence, miners found to have PMF are usually severely impaired. Airways obstruction and bronchitis have, however, been found to be significantly greater among coal miners (regardless of CWP status) than among suitable community controls. Two important causes, or risk factors, have been found to be responsible for this chronic obstructive lung disease: coal mine dust and cigarette smoking. As a result, black lung which includes classical CWP (caused by inhalation of coal mine dust) and chronic obstructive lung disease (caused by coal mine dust and other factors), encompasses at least two disease processes and is caused by more than one factor. Further, while CWP may be diagnosed specifically by use of the chest X-ray, airways obstruction can be detected only by use of the non-specific pulmonary function test. Because of the several risk factors in the etiology of black lung and the non-specificity of some medical tests needed in diagnosis, there is often a lack of understanding of this disease by both the miner and his doctor.

Questions are often raised as to whether lung cancer is more frequent among coal miners. Although mortality studies show clearly that non-malignant respiratory disease and accidents are increased among coal miners, lung cancer does not appear to be increased. Recent data do, however, suggest that stomach cancer is more prevalent among miners and that it may be related to their coal mine dust exposure. Research is continuing in this area.

The National Coal Workers' Health Surveillance Program, conducted by NIOSH at its Appalachian Laboratory, provides each new miner with an initial and periodic free medical examination. The third round of these examinations will be completed in August of 1981. Results from the second round of examinations are shown in Table I and parts of the third round results in Table II. Clearly, CWP, as defined by chest X-ray, becomes more severe and more prevalent with increasing years underground. The disabling PMF is found mainly among men with 20 or more years underground, reflecting a dust exposure higher than that now found in U.S. coal mines. Following mandating of the 2mg/m^3 standard by the 1969 Act, dust levels have generally been well controlled in U.S. mines, now averaging less than 1.5 mg/m^3. Results from our third round of examinations may begin to show the effects of improved dust control, but because of the chronic nature of these diseases this is not yet clear.

Because our surveillance program relies only on the chest X-ray, we must rely on our National Study of Coal Workers' Pneumoconiosis to estimate the prevalence of bronchitis and persistent breathlessness (as assessed by standardized questionnaire) and lung function impairment (as assessed by standardized pulmonary function testing). This is a prospective study involving approximately 40 coal mines nationwide and over 9000 miners per round. The prevalence of bronchitis, persistent breathlessness and significant airways obstruction among miners in the second round of this study are shown in Table III. Dust control in mines is expected to also reduce these health effects. However, cigarette smoking and other factors contribute significantly to these entities. Therefore, a significant proportion of miners, especially those who smoke, will continue to be affected by chronic obstructive lung disease—even at low dust levels.

It is difficult to project the prevalence of CWP and airways obstruction over the next 10 years with confidence. When data from the third round of our National Study of CWP and the National Coal Workers' Health Surveillance Program are available, some estimates could be made. Assuming current trends and no widespread introduction of diesel equipment into underground coal mines, our knowledge of the epidemiology of these diseases leads us to conclude that CWP, chronic bronchitis and airways obstruction will all be less than the levels shown in Tables II and III.

In summary, coal workers' pneumoconiosis and associated chronic obstructive pulmonary disease are major occupational diseases among our Nation's coal miners. Passage of the Coal Mine Health and Safety Act of 1969 provided the means to control dust exposure and provide medical examinations as methods to prevent serious lung disease among coal miners. With improved dust control, classical CWP should decrease to a very low level. Chronic airway obstruction attributable to coal mine dust should also decrease, but will remain an important public health problem among coal miners unless cigarette smoking is similarly reduced. As a result, we must work on two fronts to prevent chronic lung disease among coal miners—first and foremost, vigorous control of dust exposure and secondly, reduction of cigarette smoking.

Mr. Chairman, this concludes our testimony. We will be pleased to answer your questions.

Attachments—Tables I–III.

TABLE I.—COAL WORKERS' PNEUMOCONIOSIS IN ROUND TWO OF THE NIOSH NATIONAL COAL WORKERS' HEALTH SURVEILLANCE PROGRAM

Years mining	Round two radiographic category [1]									
	[2] 0		[2] 1		[2] 2		[2] 3		[2] PMF	
	Number [3]	Percent [4]	Number [3]	Percent [4]	Number [3]	Percent [4]	Number [3]	Percent [4]	Number [3]	Percent [4]
0 to 9	90,520	99.3	585	0.6	35				19	
10 to 19	7,316	87.1	973	11.6	83	1.0	4	0.1	22	0.3
20 to 29	5,492	72.2	1,635	21.5	387	5.1	26	0.3	69	0.9
30 to 39	3,336	62.0	1,476	27.3	428	8.0	64	1.2	88	1.6
40 plus	905	56.0	485	30.2	149	9.2	20	1.2	56	3.5
Total	107,569	94.2	5,145	4.5	1,082	0.9	114	0.1	254	0.2

[1] ILO-U/C 1971 International classification of Pneumoconioses. As of Aug. 1, 1981, the 1980 ILO International classification of the Pneumoconioses will be used.

[2] 0,1,2,3, PMF equals categories of pneumonoconiosis.

[3] Number of miners examined.

[4] Percent of miners in each category.

Source: Merchant, J. A., Coal Workers' Pneumoconiosis Surveillance in the United States. Fifth International Conference on Pneumoconiosis, Caracas, Venequela, Oct. 29, 1979 to Nov. 3, 1979.

TABLE II.—COAL WORKERS' PNEUMOCONIOSIS IN ROUND THREE OF THE NIOSH NATIONAL COAL WORKERS' HEALTH SURVEILLANCE PROGRAM [1]

Years mining	Category					Total
	0	1	2	3	PMF	
0 to 9	39,050	416	14	1	2	39,483
Percent	98.90	1.05	0.04	0.00	0.00	
10 to 19	6,167	424	22	1	4	6,618
Percent	93.185	6.407	0.332	0.015	0.060	
20 to 29	2,228	410	52	5	9	2,704
Percent	82.396	15.163	1.923	0.185	0.333	
30 to 39	2,094	628	130	9	58	2,919
Percent	71.737	21.514	4.454	0.308	1.987	
40 plus	369	135	32	4	14	554
Percent	66.606	24.368	5.776	0.722	2.527	
Total	49,908	2,013	250	20	87	52,278
Percent	95.467	3.851	0.478	0.038	0.166	

[1] Oct. 1, 1978 through Dec. 15, 1980.

TABLE III.—THE PREVALENCE OF BRONCHITIS, PERSISTENT BREATHLESSNESS, AND SIGNIFICANT AIRWAYS OBSTRUCTION IN THE SECOND ROUND OF THE NATIONAL STUDY OF COAL WORKERS' PNEUMOCONIOSIS (Number 9,343)

States	Bituminous				Anthracite		
	Pennsylvania	West Virginia	Virginia, Kentucky, Alabama	Ohio, Indiana, Illinois	Colorado, Utah	Pennsylvania	Total
Bronchitis:							
Number	696	973	1,298	299	381	130	3,777
Percent	39.0	41.3	41.7	36.3	37.3	53.5	40.4
Persistent breathlessness:							
Number	167	271	399	49	103	62	1,051
Percent	9.4	11.5	12.8	5.9	10.1	25.3	11.2
Significant airway obstruction:[1]							
Number	444	495	678	220	172	58	2,067
Percent	26.5	22.2	23.6	28.5	21.2	31.9	24.2

[1] Based on FEV$_1$/FVC less than 0.7 on 8,545 examinations.

Chairman. RANGEL. Mr. Gibbons?

Mr. GIBBONS. Well, I thank the doctors for their testimony. I am interested.

What the committee faces, we now have a dollar-a-ton-tax, or 50 cents-a-ton-tax on underground coal, and 25 cent tax on nonunderground mined coal. Is there any pneumoconiosis, any black lung connected with the strip mining?

Dr. MERCHANT. We have studied strip mining, and we do find some coal workers' pneumoconiosis with strip mining. Occasionally one can find very severe cases of pneumoconiosis. This is often associated with exposure to high silica levels from drilling through the over burden to get to the coal. But we do see in about 4 percent of strip miners, at least in the one rather extensive study we did, some stage of coal workers' pneumoconiosis or pneumoconiosis, defined by chest X-ray. This does appear to occur. Many of these miners in that study did have previous underground exposure, but some of the miners appeared to develop their pneumoconiosis only from their strip mining exposure.

Mr. GIBBONS. The proposal before the Congress is to increase the tax to a dollar a ton on underground mined coal, to a dollar a ton on strip mined coal. Based upon your experience, would you say that this is a wise distribution of the cost of this disease?

Dr. MERCHANT. Well, I think it is fair to say that the risk of pneumoconiosis and respiratory disease is less among surface mining.

The dust levels there are less, on the average less than half the dust levels we find in underground mines.

In strip mines the dust levels were about five-tenths of a milligram, as opposed to averages in the neighborhood of 1.2 milligrams per cubic meter in underground mines.

But I think that gives you some idea of what the risks are.

Mr. GIBBONS. Let's talk about the risk of cigarette smoking. How do you quantify it?

Dr. MERCHANT. Well, through epidemiological studies, it is possible to quantitate as best we can the relative strength of these risk factors in causing chronic obstructive lung disease. This is a difficult area because there are many factors involved that have to be adjusted.

But the studies that have been done do suggest that both cigarette smoking and coal mine dust play an important role and as far as we can tell, they play a similar role, particularly for miners who were exposed prior to implementation of good dust control.

Now, for miners who have been exposed only since 1973, when dust control really became quite effective, one would expect that cigarette smoking would be a more important risk factor than coal mine dust exposure.

But it is only possible to quantify these risks in looking at large groups of people. In individuals it is rather difficult, if not impossible.

Mr. **Gibbons**. Let's just take some rough approximations. You said that between the open mine or the strip mine, and the subsurface mine, the risk was about twice as great for contracting this disease or injury as it was at a strip mine.

Am I being accurate there?

Dr. **Merchant**. I think that is right, if one can equate dust exposure to risk, and I think there is dose response data which would tend to support that presumption, yes.

Mr. **Gibbons**. So the present tax of about 50 cents on underground coal and 25 cents on the strip mine coal is approximately rough justice, is that correct? I am just trying to get information, you know, I am not nearly the expert in this area that you are. I am just trying to get some feeling as to what is rough justice.

Dr. **Merchant**. Well, I think that would approximate what we find in terms of dust levels and also in terms of our epidemiological studies, yes.

Mr. **Gibbons**. All right. If you had to factor cigarette smoking in there, what would happen?

Dr. **Merchant**. Well, as I indicated, as nearly as we can tell based upon the studies, and most of these studies involve miners who had a good deal of exposure prior to implementation of good dust control, it appears that coal mine dust exposure and cigarette smoking are having similar effects in terms of airways obstruction.

As I pointed out in the testimony, classical coal workers' pneumoconiosis is caused only by coal dust exposure. Smoking appears not to play a significant role there. But the vast majority of the claims, and the vast majority of miners who are becoming impaired, are becoming impaired because of airway obstruction attributable to the dust they inhale and, for those who smoke, the cigarette smoking.

Mr. **Gibbons**. What is the chance of a person contracting CWP, the restricted airways part of it, or just let's say just plain CWP? I don't know whether I am making myself clear, whether it is going to be a good question or not, if that person is a smoker versus a nonsmoker?

Dr. **Merchant**. Well, the studies tell us that if you are talking strictly about the classical coal workers' pneumoconiosis, which is, as you say, the restrictive disease, which is manifest by the nodules, the scarring on the lung, smoking does not appear to play an important role.

Not in the fibrosis.

Where the smoking becomes a factor is in causing the airway obstruction, and the bronchitis and emphysema often found in coal miners.

Mr. GIBBONS. What proportion of our beneficiaries are the classical cases and what are just the obstructed airways?

Dr. MERCHANT. Well, I would have to defer to Social Security or the Department of Labor on that.

Certainly in our epidemiological studies we are finding between 24 and 40 percent of the miners who have pretty good evidence of airway obstruction, either bronchitis as defined by the typical symptoms, or evidence on lung function testing.

As opposed to that, we are finding in that particular study that 10 percent have classical coal workers' pneumoconiosis. So it is——

Mr. GIBBONS. About 3 or 4 to 1 ratio?

Dr. MERCHANT. At least 2 to 4 to 1, depending exactly what you want to use as your definition of airway obstruction.

So the big problem in miners is, the biggest problem is airway obstruction.

Mr. GIBBONS. That is connected to smoking as well as to the dust they breathe, is that right?

Dr. MERCHANT. That is correct.

Mr. GIBBONS. Is there any way of fixing in your own mind, or from your own studies, or your own estimate as to how much of that is related to smoking and how much is related to just coal dust?

Dr. MERCHANT. The only studies that have been done are on miners that had exposure prior to good dust control.

It appeared that, as I said, about half of that was due as nearly as we can tell to smoking, and about half to coal mine dust inhalation.

Mr. GIBBONS. Thank you.

Chairman RANGEL. Are you saying that coal miners smoke more than the general population?

Dr. MERCHANT. No, I am not suggesting that, but coal miners smoke about as much as other blue collar groups.

Chairman RANGEL. Forgetting smoking, what percentage would you say roughly in these figures of coal miners that put in 20 years underground, what is the likelihood of their coming up with some serious respiratory problem that would be connected with working underground for 20 years?

Dr. MERCHANT. Well, according to our most recent surveillance program it would appear that about 18 percent who have worked 20 to 29 years underground have typical coal workers' pneumoconiosis as found on X-ray.

I would expect that a substantially larger percentage of those miners would have some airway obstruction, bronchitis or airway obstruction which in part could be attributable to inhalation of coal dust.

Chairman RANGEL. Well, if you guessed, about how many would not have had it if they were not working underground in coal mines?

Dr. MERCHANT. The problem, when we are getting into these nonspecific lung diseases is that the general population is subject to bronchitis and emphysema, and, of course, the general population smokes cigarettes.

Chairman **Rangel**. OK, if you will hold your point, I am asking whether you have taken that into consideration as you would with any other occupation, assuming that coal miners chew tobacco, smoke cigarettes, and get ill, is there a dramatic connection between this? I am just asking a relationship of some sample that may have been taken with underground coal mining as opposed to just some fellow that lives in a city.

Dr. **Merchant**. Yes, there is significant evidence that coal mine dust inhalation will bring about these diseases in addition to smoking and other risk factors.

Chairman **Rangel**. You are working with DOL agencies to come up with some medical standards that targets that effectively rather than just a broad-brush approach to this?

Dr. **Merchant**. Well, yes, we are, and we did advise the Department of Labor on their most recent standards which we feel are a definite improvement over the previous standards.

Chairman **Rangel**. Staff has a question they would like to get in the record and that is, the Department of Labor assumes for actuarial purposes that the trust fund beneficiary will have a normal lifespan. Is this appropriate or should some adjustment be made for those more seriously affected beneficiaries?

Dr. **Merchant**. Well, that is a complicated question. Most mortality studies of miners have shown that the miners' overall death rate is perhaps only marginally above what one finds in the general population, so I think that to answer that question one really needs to know what they are using for their controls. Are they using healthy workers as their controls? If they are using healthy workers then the coal miners' mortality experience is generally poorer. If they are using the general population, which includes all of those people who are unfit to work, then the mortality experience is similar.

Chairman **Rangel**. Well, I thank you for your contribution.

You recognize the problem Congress has, and I hope that if we haven't asked a question that you feel free at this point to make a contribution as to what the solution to this problem would be.

Do you have anything you would like to suggest?

Dr. **Millar**. I don't think we have anything further to add, Mr. Chairman.

Chairman **Rangel**. I am really shocked at some of the testimony about the incidences of lung cancer. They are much lower than I thought they would be as relates to cigarette smoking.

You didn't mention anything about the use of these respiratory devices they are supposed to use. Are they within the safety factors? Do you find miners doing what they are supposed to do, as well as the other dust control regulations?

Dr. **Merchant**. Yes. The use of respirators in mines are confined to emergency situations in the case of a disaster. We really do not feel respirators can play a significant role in reducing risk. There is perhaps one respirator that may play a role in long wall mining which is difficult to ventilate.

But generally we don't think respirators play a role there, only in the case of an emergency.

Chairman **Rangel**. This is a new area. Do you believe the Congress is doing all that it can to protect the health of the coal miner?

Dr. **Merchant**. Well, I——

Chairman **Rangel**. I assume that is a responsibility of the Department, to set those standards, or help us to set them.

Dr. **Merchant**. Yes, I think the Congress provided strong legislation in the Coal Mine Health and Safety Act which really was landmark legislation.

It has provided the framework to protect miners. I think there is still a lot of work to do in conducting research to understand the diseases of miners.

I think there is still a lot of work that needs to be done in terms of implementing all of the provisions that Congress has laid before us.

Chairman **Rangel**. Well, it is not within our jurisdiction, but are there recommendations that you have made to the Congress that have not been implemented through legislation that you know of so that you are not locked out of it?

Dr. **Merchant**. No, not that we are aware of.

Chairman **Rangel**. Well, if there is something you think about, please feel free to send it to the committee because we move from subject matter to subject matter where the subject area of the law falls within other jurisdictions.

So, if there are some things you missed testifying today because we didn't ask the question, feel free to send it in to us.

Thank you so much.

[The following was subsequently received:]

Department of Health and Human Services,
Rockville, Md., September 24, 1981.

Hon. Charles B. Rangel,
House of Representatives,
Washington, D.C.

Dear Mr. Rangel: NIOSH appreciated to opportunity to participate in the Subcommittee on Oversight hearings on July 27 concerning the Black Lung Disability Trust Fund. Referral questions raised in your letter of August 21 will be answered in order.

First. The third round of the NIOSH Coal Miners' Health Surveillance Program will end this month. Several hundred examinations are still being processed. After they are processed we will analyze the data. I anticipate the results to be available in the first quarter of fiscal year 1982 and will forward them to the Subcommittee. The third round of the National Coal Study is also drawing to a close and is scheduled for completion by the end of this fiscal year. Because of the complex nature of the examinations, results of this study will take somewhat longer but should be completed and sent to you by the end of fiscal year 1982.

Second. We feel it will be difficult, but possible, to make some projections based upon trends over the first 10 years of our experience with our Surveillance Program and the National Coal Study. We will provide these estimates upon availability of all third round data.

Third. The prevalence of coal workers' pneumoconiosis during the first round of the National Coal Study was much higher than had been anticipated. There are perhaps four reasons why the figure of 27 percent, which you quoted, is over four times that now found in our Surveillance Program. First, the National Coal Study is not necessarily representative of the coal industry or the Surveillance Program. Second, there is some evidence of significant reader or interpretation differences between the National Coal Study and the Surveillance Program particularly in regard to the first round. Third, the International Standard for the radiograph interpretation of CWP changed between 1970 and our most recent round. Finally, there is convincing evidence that the prevalence of CWP, in fact, has decreased but principally because many miners with a good deal of underground experience have left mining since the first round of examinations in 1970. To date, we have no convincing evidence of a decrease because of dust control, although we suspect this may be detected during analysis of third round data.

Fourth. I am not aware of other "major" studies of coal workers' pneumoconiosis and airways obstruction currently ongoing in the United States.

Fifth. At this time, we do not have enough data to answer your question regarding additional reduction of coal mine dust levels. Again, we may be able to respond after analysis of third round data.

If I may be further assistance, please let me know.

Sincerely yours,

J. DONALD MILLAR, M.D.,
Assistant Surgeon General Director.

Chairman RANGEL. Mr. Evered, Administrator, J. Erich Evered, U.S. Energy Information Administration.

Mr. Duncan, you didn't have any other questions, did you?

Mr. DUNCAN. No, thank you, Mr. Chairman.

STATEMENT OF J. ERICH EVERED, ADMINISTRATOR, ENERGY INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF ENERGY, ACCOMPANIED BY MARY HUTZLER, CHIEF, COAL DATA ANALYSIS AND FORECASTING BRANCH, ENERGY INFORMATION ADMINISTRATION

Mr. EVERED. Thank you, Mr. Chairman.

Chairman RANGEL. Mr. Evered, you understand the general thrust of these hearings.

You may have your statement submitted in toto or proceed as you think best for you.

Mr. EVERED. Mr. Chairman, I would be pleased to summarize my remarks for the benefit of the subcommittee and to have my prepared testimony inserted into the hearing record.

Chairman RANGEL. Without objection.

Mr. EVERED. Mr. Chairman, I am Erich Evered, Administrator of the Energy Information Administration.

I am accompanied this morning by Mrs. Mary Hutzler, Chief of EIA's Data Analysis and Forecasting Branch, Coal Division.

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to be here today to discuss the Energy Information Administration's coal forecasts.

This testimony will address the current EIA coal production forecasts, their relationship to other coal forecasts, and the sensitivity of these forecasts to changes in miners' wage rates and to increases in the black lung tax as requested by the chairman.

The EIA was not asked to, and did not, analyze the effects of these changes on the trust fund itself.

In short, our findings indicate that there will be little or no impact on future coal production as a result of increased contribution to the Black Lung Trust Fund.

These findings are based on two scenarios, the first with the current tax doubled and the second with the tax set as a fixed percent of the sales price.

We did find, however, that significant wage increases would result in decreases in production and a shift to lower quality coal.

Except for 1981, when the United Mine Workers' strike results in a decrease in coal production from its 1980 levels, coal production is expected to increase at an average annual rate of 5.3 percent over the next 15 years.

This growth rate will vary from year to year, however, reflecting the state of the economy and potential interruptions from work stoppages. EIA projects coal production to be approximately 1.02 billion tons in 1985, 1.35 billion tons in 1990, and 1.8 billion tons in 1995. This compares to 830 million tons produced in 1980.

The EIA coal forecasts are generally higher than those forecasts made by Bankers Trust Co.; Data Resources, Inc.; Texaco; and Exxon. EIA's production forecast of 135 billion tons in 1990 is similar to the National Coal Association's forecast.

There are three basic reasons for the higher EIA forecast.

First, EIA assumes continuation of law existing in its forecasts. For example, the forecast assumes that the industrial sections of the Powerplant and Industrial Fuel Use Act are enforced.

Second, the EIA and the National Coal Association's projections are based on actual plants under construction and expected to be operating by 1985 and beyond. The other forecasts do not include these projections.

Third, EIA's forecast of coal consumption for new energy technologies is generally higher than the other forecasts, because we assume that all demonstration plants that were scheduled in 1980 to be operating during the forecast period would be operating as scheduled.

The various 1990 forecasts reviewed have total primary energy supply ranging between 82 and 92 quadrillion Btu's. Where EIA is higher in coal production, the other forecasters are higher in oil and natural gas imports. The tradeoff is determined by the rate at which domestic coal replaces imported oil and natural gas.

EIA analyzed two scenarios relating to changes in the Black Lung Tax authorized under the Black Lung Revenue Act. The first is a doubling of the tax resulting in a tax of one dollar a ton for underground coal and 50 cents a ton for surface coal, with the tax not to exceed 4 percent of the sales price.

The second scenario assumed a tax equal to 2 percent of the sales price on both surface and underground production.

By doubling the tax in nominal terms, coal production in 1985, 1990, and 1995 is essentially unchanged compared to production under the current tax. No impact on production is incurred because the higher tax changes the delivered price of coal only slightly during the forecast years.

Assuming an annual inflation rate of about 8 percent, the additional tax on underground coal in 1995 is equivalent to 14 cents in real 1979 dollars.

Likewise, in 1995 the additional surface coal tax of 25 cents a ton is equivalent to 7 cents in real 1979 dollars.

A 2-percent sales tax on the price of coal leaves total coal production unchanged, but slightly favors Western surface mines over Eastern deep mines.

Based on the revised base case results and the corresponding price differential, a 2-percent sales tax in 1995 would result in a tax of 71 cents a ton on deep coal and 17 cents a ton on surface coal in 1979 dollars.

EIA analyzed four scenarios dealing with changes in wage rates for coal miners. These four scenarios were a 1-percent and 3-percent increase in real wages and a 1-percent and 3-percent decrease in real wages.

Assuming a 7.85-percent annual inflation rate, a 1-percent real wage increase is equal to an 8.85-percent annual increase in wages in nominal terms. Under these wage increase scenarios we find a slight decrease in total coal production and a shift toward lower quality coal.

In analyzing the effects on coal production of changes in real wages, it is important to understand the repercussions which follow in the energy economy.

For instance, an increase in coal miners' wages causes coal prices to rise. A rise in the price of coal, or of any product, is usually followed by a decrease in demand for that product.

Users may also substitute alternative fuels, such as residual fuel oil and natural gas. Because deep mining is more labor-intensive than surface mining, demand for deep coal decreases while the demand for surface coal increases.

For example, assuming real wages increase 1 percent per year, Eastern deep coal production is projected to be about 8 percent less by 1995 than if coal miners' wages increased at the general rate of inflation.

This projected decrease in Eastern deep coal production is compensated by increased production of 80 million tons from western surface coal mines in 1995.

On the demand side in 1995, some industrial boilers are projected to substitute natural gas and residual fuel oil for medium sulfur coal, which could be more expensive to use in certain limited cases.

[The prepared statement follows:]

STATEMENT OF J. ERICH EVERED, ADMINISTRATOR, ENERGY INFORMATION ADMINISTRATION

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to be here today to discuss the Energy Information Administration's (EIA) coal forecasts. This testimony will address the current EIA coal production forecasts, their relationship to other coal forecasts, and the sensitivity of these forecasts to changes in miners' wage rates and to increases in the Black Lung Tax as discussed with the Subcommittee Staff. Please note that the EIA was not asked to and did not analyze the effects of these changes on the Trust Fund itself.

In summary, our findings indicate that there will be little or no impact on future coal production as a result of increased contribution to the Black Lung Trust Fund. These findings are based on two scenarios, the first with the current tax doubled and the second with the tax set as a fixed percent of the sales price. We did find however, that in three other scenarios a significant decrease in production and a shift to lower quality coal (higher sulfur content) would follow any significant wage increase. Dependent on other factors this could also trigger a change to natural gas and residual fuel oil from those marginally economic coal consumption facilities.

THE EIA COAL PROJECTIONS

The EIA prepares projections of the prices and quantities of energy products produced and consumed by the domestic energy system in future time periods. Two forecasting systems are used in EIA to project supply and demand over the next fifteen years. These systems are the Short-term Integrated Forecasting the next five quarters, and the Midterm Energy Forecasting System, projecting the domestic energy future in 1985, 1990, and 1995, but not for each of the intervening years.

Except for 1981, when the effect of the United Mine Workers strike will result in a decrease in coal production from its 1980 levels, coal production is expected to increase at an average annual rate of 5.3 percent over the next fifteen years. This growth rate will vary from year to year, however, reflecting the state of the economy and potential interruptions from work stoppages. This rate is nearly four times the projected rate of growth in gross energy demand and represents a significant change from the slow growth in coal production before 1973. As a result, coal is projected to account for 36 percent of gross energy consumption in 1995 compared to 20 percent in 1980. The Midterm Energy Forecasting System projects coal production to be approximately 1.0 billion tons in 1985, 1.4 billion tons in 1990 and 1.8 billion tons in 1995.

Underground coal production is projected to grow at an average annual rate of 7 percent a year from 1980 to 1995, and surface coal production is projected to grow at 4 percent a year. Midwest production of deep coal is projected to increase fivefold by 1995 because of increased demand for high-sulfur bituminous coal, primarily by the electric utility industry. This results from the latest Environmental Protection Agency standards under the Clean Air Act, which require sulfur emission controls on all coal use, thus reducing the relative attractiveness of low sulfur coal.

Most of the increase in surface coal production is projected to occur in Wyoming and Montana, which have vast reserves of low and medium sulfur, subbituminous coal that is relatively inexpensive to mine. Surface production in that region is projected to increase 3.5 times, by 1995. Surface production in the East is projected to decline due to depletion effects and land reclamation requirements imposed by the 1977 Surface Mining Control and Reclamation Act. The large increase in western subbituminous coal production is driven by the great growth in coal-fired electric generating capacity coming on-line west of the Mississippi River and is projected to result in a decrease of almost 16 percent in the average Btu content per ton of coal consumed in the United States in 1995.

The midterm forecasts described in this testimony are updated from those in EIA's 1980 Annual Report to Congress. Each year, EIA produces a mid-year forecast based on current data. This base case provides a reference from which analyses can be performed.

Please remember that forecasts are projections and not facts. Neither EIA nor anyone else can foretell the future with certainty nor can any forecasting model take into account all of the factors or variables that affect business or market decisions. The EIA forecasts are designed to be internally consistent and to assist analysts and policymakers in evaluating alternative policies and assumptions.

COMPARISON WITH OTHER FORECASTS

The EIA coal forecasts are generally higher than those forecasts made by Bankers Trust Company; Data Resources, Inc.; Texaco; and Exxon. The National Coal Association's forecast of total coal production is similar to EIA's forecast. For example, in 1990 total coal production is projected by all six forecasters to range from 1,155 to 1,352 billion tons per year. EIA's forecast is at the top of the range with the National Coal Association's forecast trailing slightly at 1,349 million tons per year.

The reasons for the higher EIA forecast are as follows. First, EIA assumes existing legislation in its forecasts. Thus, for example, the forecast assumes that the industrial sections of the Powerplant and Industrial Fuel Use Act, are enforced. This act is designed to reduce petroleum and natural gas consumption by large industrial boilers, encouraging greater use of coal. As you are well aware, current Congressional action on the issue of existing legislation suggests that some relief may be given to stringent regulatory requirements. For example, H.R. 1510 would repeal Section 301 of the Fuel Use Act.

Second, the EIA utility projections are based on actual plants under construction and expected to be operating by 1985 and beyond. Both the EIA's and the National Coal Association's utility forecasts are based on these announced powerplant additions, and our forecasts are approximately 100 million tons per year higher than all the other forecasts of utility coal consumption, which average 794 million tons of coal in 1990. The EIA forecast also assumes that capital will be available for capacity expansion over the forecast period.

EIA's forecast for new energy technologies is generally higher than the other forecasters. The EIA forecast assumes that all demonstration plants that were scheduled in 1980 to be operating during the forecast period would be operating as scheduled. The forecast also assumes that loan guarantees would be provided by the Synthetic Fuels Corporation, reducing the inherent investment risk and thus the cost of these technologies. Most other forecasters did not make these assumptions.

The 1990 forecasts reviewed have total primary energy supply ranging between 82 and 92 quadrillion Btu. Where EIA is higher in coal production, the other forecasters are higher in oil and natural gas imports. The trade-off is determined by the rate at which domestic coal replaces imported oil and natural gas.

SENSITIVITY TO CHANGES IN THE BLACK LUNG TAX

The Black Lung Revenue Act of 1977 (Public Law 95-277) established a government administered trust fund to pay for benefits to certain coal miners. These miners include eligible miners who stopped working prior to January 1, 1970, and miners who stopped working after that date but for whom no "responsible mine operator" could be found. A "responsible mine operator" is defined as the last operator for whom a miner worked a cumulative one year period. The fund is financed by a tax on coal production of 50 cents per ton for underground coal and 25 cents per ton for surface coal, with the tax not to exceed two percent of the sales price. Lignite production is by law exempt from this tax.

EIA analyzed two scenarios relating to changes in the black lung tax authorized under the Black Lung Revenue Act. The first is a doubling of the tax resulting in a tax of one dollar a ton for underground coal and 50 cents a ton for surface coal, with the tax not to exceed 4 percent of the sales price. The second scenario assumed a tax equal to 2 percent of the sales price on both surface and underground production.

By doubling the tax in nominal terms, coal production in 1985, 1990, and 1995 is essentially unchanged compared to production under the current tax. No impact on production is incurred because the higher tax changes the delivered price of coal only slightly during the forecast years. The EIA assumed an annual inflation rate of 7.85 percent. Given this assumption, the additional tax on underground coal in 1995 is equivalent to 14 cents in real 1979 dollars. Likewise, in 1995 the additional surface coal tax of 25 cents a ton is equivalent to 7 cents in real 1979 dollars.

A 2 percent sales tax on the price of coal leaves total coal production unchanged, but slightly favors western surface mines over eastern deep mines. Based on the revised base case results and the corresponding price differential, a 2 percent sales tax in 1995 would result in a tax of 71 cents a ton on deep coal and 18 cents a ton on surface coal in 1979 dollars. Because deep mine production is penalized more by this tax than surface mine production, the result is a shift in coal production of 6 million tons from the East to the West in 1985, and a slightly larger shift in 1990 of 9 million tons. The reduction in eastern coal production is approximately 1 percent of the base case production in 1985 and 1990 and half a percent in 1995. This shift in coal production along with a move in the East to lower quality coal, increases the average minemouth price of coal in 1995 by 13 cents a ton for surface coal and 29 cents a ton for deep coal in 1979 dollars over the base case amount.

SENSITIVITY TO CHANGES IN WAGE RATES

EIA analyzed four scenarios dealing with changes in wage rates for coal miners. These four scenarios were a 1 percent and 3 percent increase in real wages and a 1 percent and 3 percent decrease in real wages. Assuming a 7.85 percent annual inflation rate, a 1 percent real wage increase is equal to an 8.85 percent annual increase in wages in nominal terms.

In analyzing the effects on coal production of changes in real wages, it is important to understand the repercussions which follow in the energy economy. For instance, an increase in coal miners' wages causes coal prices to rise. A rise in the price of coal, or of any product, is usually followed by a decrease in demand for that product. Users may also substitute alternative fuels, such as residual fuel oil and natural gas for more expensive coal. Because deep mining is more labor intensive than surface mining, demand for deep coal decreases while the demand for surface coal increases.

For example, assuming real wages increase 1 percent per year, eastern deep coal production is projected to be about 8 percent less by 1995 than if coal miners' wages increased at the general rate of inflation. This projected decrease in eastern deep coal production is compensated by increased production of 80 million tons from western surface coal mines in 1995. Total coal production is projected to increase by 8 million tons in 1995 because lower priced, lower quality coal is substituted for the higher priced, low-sulfur and high Btu coals.

On the demand side in 1995, industrial boilers are projected to substitute natural gas and residual fuel oil for medium sulfur coal, which is more expensive, and electric utilities are projected to use higher sulfur coal and more subbituminous coal.

Assuming real wages increase annually by 3 percent, the above shifts in coal usage and fuel mix are magnified. Eastern deep production in 1995 is projected to be 24 percent lower, western surface production is projected to be 20 percent higher, and total coal production is projected to be 35 million tons or 2 percent lower than the base case amount of approximately 1.8 billion tons.

Should coal miners' real wages decline, all of the impacts just described are projected to be reversed.

In conclusion, a doubling of the current black lung tax would essentially have little or no impact on future coal production. A 2 percent tax on the price of coal also would not alter total production, but would cause a slight shift in production from eastern deep to western surface mines and to lower quality coal. The effect of wage increases on coal production is more dramatic causing a decrease in total coal production, a movement to using cheaper, lower quality coals, and a change in fuel consumption to natural gas and residual fuel oil.

Mr. Chairman, Members of the Subcommittee, that concludes my prepared statement. I would be pleased to answer any questions you may have.

Chairman RANGEL. I know there are several things you must look at before you make a professional judgment.

One of the things this committee is concerned with is at what point would an increase in taxes deter production?

I guess all of your testimony is going to say it all depends.

Mr. EVERED. That is correct. We have not performed the particular analysis to determine where that threshhold is.

Chairman RANGEL. I don't want to put you on the spot but we do have some need for information in this committee. Do you have capabilities to give us a variety of scenarios based on assumptions without knowing what is actually going to happen, but so that you would then be able to give the scenario back to us as to what things could happen? For example, if we increased the taxes, to what degree it would go in being actually a determining factor in the sale of coal? That would be one scenario. You may have to take into consideration the United Mine Workers.

So when I throw those things at you, it means that I am not asking you to be locked into it. But it would help the committee a great deal if you could just project some of the things that could happen, and also understand that we may have to get involved with tax questions. It doesn't do the Nation any good to protect the workers trust fund and put them out of work. Is that an impossible task? Do you have resources to assist us?

Mr. EVERED. Yes, sir, we do have the capability. We would be pleased to provide those analyses for the subcommittee, given some guidance from the subcommittee as to the possible ways in which the taxes might be implemented.

Chairman RANGEL. Let me check with staff, because I think basically this is where we would need help from you. The other departments could help us with the standards, as to health problems that we are talking about. But basically, once the determination is made and we start getting involved with protecting the trust fund, we have to tax somebody, and it probably will be the industry.

It wouldn't bother us at all, certainly the Chair, even if you discussed it with industry, as to what their projection would be, because ultimately the responsibility is going to rest legislatively with the committee. You would have fulfilled your responsibility if you just gave us the options. I will see whether that question can be refined.

Have you studied the United Mine Workers contract already and taken that into consideration in your testimony?

Mr. EVERED. Yes, sir, we have.

Chairman RANGEL. Have you taken into consideration the fiscal impact on workmen's compensation, if in fact we find the Federal responsibility remaining as it is? Or if we withdraw from this area, have you studied the impact it would have on State boards of compensation systems?

Mr. **EVERED**. Mr. Chairman, that is a bit beyond the area of our expertise and responsibility.

Chairman **RANGEL**. That would be in Labor?

Mr. **EVERED**. Yes, sir, that would be.

Chairman **RANGEL**. Well, there may be questions that we haven't put before Energy, but it seems to me that you would have within your Department some calculations as to what the consumption is going to be in energy and what factors influence the demand. The foreign oil situation being what it is, outside the control of the United States, it would cause you to give us a lot of variables. We appreciate that, but we certainly don't want to get involved in economic viability of coal supply. And that is the major concern we have, even though we have to raise the money.

Mr. **EVERED**. I understand.

Chairman **RANGEL**. Thank you very much.

Mr. **EVERED**. Thank you, Mr. Chairman.

[The following was subsequently received:]

DEPARTMENT OF ENERGY,
Washington, D.C., September 15, 1981.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter dated August 20, 1981, in which you requested an analysis of current and future coal prices and the effect of alternative black lung taxes on future coal production.

The five enclosures respond to each of your questions in order. The analyses in these enclosures indicate that none of the changes to the black lung tax that you requested us to consider will significantly affect total coal production. This results because the black lung tax is only a small portion of the final delivered price of coal. There are shifts in coal production from the East to the West, from deep mines to surface mines, and from higher to lower quality coal. However, none of the shifts are projected to exceed 3 percent in 1995.

We would like to remind you that these are projections and not facts about the future. Neither the Energy Information Administration (EIA), nor anyone else, can foretell the future with certainty. The EIA projections are designed to be internally consistent and to assist analysts and policymakers in evaluating alternative policies and assumptions.

We trust that this information meets your needs. If the EIA can be of further assistance or if you have any questions, please contact me at 633-9085.

Sincerely,

J. ERICH EVERED,
Administrator, Energy Information Administration.

Five enclosures.

ENCLOSURE 1

Question. What is the current and the projected (e.g., 1985, 1990, and 1995) average price per ton of underground mined and surface mined coal in the East, West, and Nationwide? What are the differences in prices for steam coal and metallurgical coal?

Answer. Average free on board (f.o.b.) mine prices are given in 1979 dollars in Table 1-1 for surface mined and deep mined coal (excluding lignite) in the East,[1] West [2] and Nationwide for 1979, 1985, 1990 and 1995.[3] Also given in Table 1-1 are prices for metallurgical and steam coal (excluding lignite) for 1978 and the above forecast years.[4] Metallurgical coal in 1978 refers to coking coal delivered to the industrial sector; and in 1985, 1990, and 1995 to premium coal which is primarily converted to coke, and may also be exported, or used as low sulfur steam coal. Steam coal in 1978 refers to coal delivered to the utility sector, and in 1985, 1990, and 1995 to bituminous and subbituminous coal other than premium.

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[1] The East includes all coal regions east of the Mississippi River plus the Central West bituminous coal region located in Arkansas, Iowa, Kansas, Missouri and Oklahoma.

[2] The West includes all coal regions west of the Mississippi, except the Central West region.

[3] Mark Wincek of the House Committee staff indicated that the prices should exclude the price of lignite. Table 1-2 gives average f.o.b. mine prices including lignite.

Surface coal prices are expected to increase in the East by approximately $10.00 a ton by 1995 due to the depletion of eastern surface coal that can be mined economically. Eastern surface coal production was at 270 million tons in 1980; it is projected to be 129 million tons in 1990 and 64 million tons in 1995. The price of eastern deep coal increases steadily over the forecast period as deeper and thinner coal seams are developed in response to growth in demand.

The average f.o.b., mine price of western surface coal (excluding lignite) decreases moderately over the forecast period (1985 to 1995) due to increasing production of subbituminous coal from Wyoming and Montana. These States have reserves of subbituminous coal which can be strip-mined relatively inexpensively since the seams are thick and the overburden ratios are low. Production from the North Western Great Plains region (Western Montana, Wyoming, and Northern Colorado) increases from 70 percent of total western surface production (excluding lignite) in 1979 to 84 percent in 1995.

Real western deep coal prices (in constant 1979 dollars) are approximately constant over the forecast period. Almost 25 percent (4.3 million tons) of projected total western deep coal production in 1985 is composed of metallurgical coal found in the Rockies (Southern Colorado, Utah and New Mexico). This coal is high-priced (currently over $34.00 a ton), of good quality (low sulfur content), and is used for making coke in the industrial sector. Although the amount of metallurgical coal produced over the forecast period is projected to remain constant at 4.3 million tons per year, western deep coal production (other than metallurgical coal) is projected to increase from 12 million tons in 1985 to 55 million tons in 1995—an average growth rate of 16 percent per year. This low sulfur, predominantly bituminous, coal is cheaper than metallurgical coal, slightly lowering the average price of western deep coal in 1990 and then having an increasing effect on the price as its projected production increases to 55 million tons in 1995, 25 million tons more than is projected for 1990.

Although average f.o.b. mine prices in the West stay approximately constant in real terms over the forecast period, increases in both western surface and deep mine prices over current prices are forecasted in 1985. The market price was depressed in 1979 because of the excess productive capacity of the industry.

Overall, the average f.o.b. mine price of coal (excluding lignite) for the Nation increases in real 1979 dollars from its current price of $24.73 a ton to $27.57 a ton in 1990, and decreases slightly in 1995 to $27.42 a ton as western surface coal captures almost 50 percent of the market. It is assumed that demand will increase so that there will not be excess productive capacity by 1985.

TABLE 1-1. AVERAGE F.O.B. MINE PRICES EXCLUDING LIGNITE, 1979-95

[1979 dollars per ton]

Region and mining method	1979[1]	1985	1990	1995
East:				
Surface	22.93	28.72	30.30	32.82
Deep	33.36	34.29	35.93	37.30
Total	28.42	32.18	35.01	36.99
West:				
Surface	10.44	10.91	10.83	10.41
Deep	23.53	26.04	25.97	26.78
Total	11.97	11.85	12.19	12.07
United States:				
Surface	18.66	20.02	16.14	12.91
Deep	32.76	33.98	35.44	36.63
Total	24.73	26.53	27.58	27.42

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[4] Metallurgical and steam coal minemouth prices are no longer being reported; the last historic year for which these prices were reported was 1978.

TABLE 1-1. AVERAGE F.O.B. MINE PRICES EXCLUDING LIGNITE, 1979-95—Continued

[1979 dollars per ton]

Region and mining method	1979[1]	1985	1990	1995
Type of coal	1978	1985	1990	1995
Metallurgical[2]	42.56	44.48	48.94	52.20
Steam[3]	18.54	22.58	23.50	24.18

[1] Source: Form EIA-7A "Coal Production Report"—annual.
[2] Historical price is the minemouth price of industrial coking coal in 1978. Source: EIA-7.
[3] Historical price is the minemouth price of steam coal to the utility sector in 1978. Source: Form EIA-7.

TABLE 1-2. AVERAGE F.O.B. MINE PRICES INCLUDING LIGNITE, 1979-95

[1979 dollars per ton]

Region and mining method	1979[1]	1985	1990	1995
East:				
Surface	22.93	28.72	30.30	32.82
Deep	33.36	34.29	35.93	37.30
Total	28.42	32.18	35.01	36.99
West:				
Surface	9.55	9.52	9.17	9.02
Deep	23.53	26.04	25.97	26.78
Total	10.86	10.29	10.17	10.19
United States:				
Surface	17.58	17.86	13.26	10.76
Deep	32.76	33.98	35.44	36.63
Total	23.75	24.72	24.54	23.90
Type of Coal	1978	1985	1990	1995
Metallurgical[2]	42.56	44.48	48.94	52.20
Steam[3]	17.49	20.82	20.65	20.89

[1] Source: Form EIA-7A "Coal Production Report"—annual.
[2] Historical price is the minemouth price of industrial coking coal in 1978. Source: EIA-7.
[3] Historical price is the minemouth price of steam coal to the utility sector in 1978. Source: Form EIA-7.

ENCLOSURE 2

Question. What would be the effect, if any, on coal production in 1985, 1990, and 1995 if the coal tax is:
(a) doubled;
(b) doubled with no price cap;
(c) made 2 percent of price per ton;
(d) made 3 percent of the price per ton of underground-mined coal and 1 percent of the price per ton of surface-mined coal;
(e) made $1.00 per ton for all coal with no cap;
(f) made a very large multiple of the current tax (e.g., ten times)?

Note that most of these items are in proposals which the Subcommittee must consider. Also, would any of these tax increases significantly decrease production (e.g., decrease the rate of growth in production to below the average rate over the last three years)?

Answer. The Black Lung Revenue Act of 1977 (P.L. 95-227) established a government administered trust fund to pay for benefits for certain coal miners. These miners include eligible miners who stopped working prior to January 1, 1970; and also miners who stopped working after that date but where no "responsible mine operator" could be found. A "responsible mine operator" is defined as the last operator for whom a miner worked a cumulative one year period. The fund is financed by a tax on coal production of 50 cents a ton for underground coal and 25 cents a ton for surface coal with the tax not to exceed two percent of the sales price. Lignite production is exempt from this tax.

The black lung tax discussed and analyzed here pertains solely to the federally collected tax authorized under the Black Lung Revenue Act. Individual States also have black lung funds which are financed by payroll taxes. Individual mine operators pay for black lung insurance which provides benefits to miners who are the responsibility of the individual operators. The analysis presented here assumes the current State payroll tax and operators' insurance for all scenarios. Only the tax as defined by the Black Lung Revenue Act is modified in these scenarios.

Five analyses were conducted to evaluate the effect on coal production of a change in the financing of the black lung trust fund. The first analysis doubled the tax to one dollar a ton for underground coal and 50 cents a ton for surface coal, with the tax not to exceed 4 percent of the sales price. The second scenario examines a black lung tax equal to 2 percent of the sales price; the third scenario assumes a 3 percent tax on the price of underground coal and a 1 percent tax on the price of surface coal. A one dollar a ton tax, regardless of the method of mining, is levied in the fourth analysis. The final scenario sets the tax at ten times its current rate to study the impact of a very high tax, establishing an upper bound. Ten times the current tax is equivalent to $5.00 a ton in current dollars, for underground coal and $2.50 a ton for surface coal, not to exceed 20 percent of the sales price.

The first analysis represents the first two requested scenarios, which are equivalent because the tax does not exceed the 4 percent cap, after adjustment for the impact of inflation on the tax.[1] By doubling the tax, surface coal would be taxed $0.32 a ton (1979 dollars) in 1985. This figure is less than 4 percent of the average 1979 dollar price of western surface coal, excluding lignite, which is $0.44. Likewise, the deep coal tax of $0.64 a ton (1979 dollars) in 1985, would be less than 4 percent of the average price of western deep coal which is $1.04. (See table 1-1.) Western coal is used in this example since it is cheaper than eastern coal. In 1990 and in 1995, the difference between the tax and the 4 percent cap becomes even greater.

Table 2-1 shows projected coal production by region and mining method in 1985, 1990 and 1995 for each scenario. Figure 2-1 shows both the actual projected change and the percentage change in total coal production for each of the five scenarios relative to the base case.

DOUBLING THE BLACK LUNG TAX

By doubling the tax in nominal terms, coal production in 1985, 1990 and 1995 is essentially unchanged compared to production under the current tax. No impact on production is incurred because the higher tax changes the delivered price of coal only marginally during the forecast years. Assuming an annual inflation rate of 7.85 percent, the additional tax on underground coal is equivalent to 15 cents in real 1979 dollars in 1995. Likewise, the additional surface coal tax of 25 cents a ton is equivalent to 7 cents in real 1979 dollars in 1995.

Since the projected average minemouth price of coal in 1995 is about $37 a ton (1979 dollars) for eastern deep coal and about $10 a ton for western surface coal, excluding lignite, the percentage increase in price based on doubling the black lung tax is less than 1 percent. The increase is even less significant when comparing the delivered price of coal to end-users due to the large transportation costs incurred. As a result, consumption and production are essentially unaffected in this scenario as compared to the base case.

DOLLAR TAX

Increasing the tax in nominal terms to one dollar a ton of coal regardless of the mining method (underground or surface), has essentially no impact on total coal production, region of production, or mining method. Coal production is projected to be unaffected by the additional tax because the price of coal is only marginally higher when compared to the base case. Assuming an annual inflation rate of 7.85 percent, the additional tax is equivalent to 15 cents a ton (1979 dollars) for underground coal and 22 cents a ton for surface coal in 1995.

TEN TIMES BLACK LUNG TAX

A tenfold increase in the black lung tax is equivalent to a tax of $5.00 a ton in current dollars for deep mined coal and $2.50 a ton for surface mined coal. This equates to a tax in 1995 of $1.49 and $0.75 a ton (1979 dollars) for deep and surface mined coal, respectively, assuming an annual inflation rate of 7.85 percent.

In both 1985 and 1990, total coal production is forecasted to be three million tons lower than in the base case (0.3 percent lower in 1985 and 0.2 percent in 1990). In 1995, total coal production is projected to be seven million tons higher (0.4 percent), due to increased lignite production, which is 39 million tons (12.7 percent) more than its base case production. Lignite, which is untaxed, is being substituted for more expensive coal by the synthetic fuel industry in this scenario. The quantity of synfuels produced remains about the same as the base case; more coal is needed because of the lower Btu content of lignite. Lignite has an average energy content of 13 million Btu per ton, which is the lowest of all types of coal. Although the tenfold increase in the black lung tax causes total coal production to be 7 million tons higher than the base case in 1995, the total energy content of the coal produced is projected to be 0.2 quadrillion Btu lower.

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[1] Inflation decreases the real cost of a fixed dollar tax. That is, a $1.00 a ton tax is equivalent to a $0.30 a ton tax in 1995 (in 1979 dollars), assuming an annual inflation rate of 7.85 percent.

The difference between the tax on surface and deep mined coal causes a shift from deep to surface production in both the East and West. In 1995, western deep production is 5 million tons (8.5 percent) less than in the base case, while total surface production is 16 million tons (1.9 percent) higher. Similarly, eastern deep mine production is reduced by 9 million tons (1.0 percent) while surface production is 4 million tons (6.3 percent) higher.

BLACK LUNG TAX EQUIVALENT TO 2 PERCENT OF SALES

A 2 percent sales tax on the price of a ton of coal slightly favors western surface mines over eastern deep mines, leaving total coal production essentially unchanged. Western surfaced coal prices (excluding lignite) in the revised base case are projected to average $10.41 a ton in 1995 (1979 dollars); and eastern deep coal prices average $37.30 a ton. A 2 percent sales tax based on these prices would result in a tax of 21 cents a ton on western surface coal and 74 cents a ton on eastern deep coal.

Since deep mines are ;enalized more heavily than surface mines, the result is a shift in projected coal production from deep to surface mines, primarily from eastern deep mines to western surface mines. In 1995, eastern deep mines are projected to produce 6 million tons (0.7 percent) less than in the base case and western surface mines produce 5 million tons (0.6 percent) more to compensate. A 2 percent tax is projected to have little effect on total production.

THREE PERCENT-ONE PERCENT SALES TAX

Western surface mined coal is favored over eastern deep mined coal more strongly than in the 2 percent tax scenario when the black lung tax is changed to 3 percent of the sales price for deep coal and 1 percent of the sales price for surface coal. Based on the revised based case average prices for 1995, this scenario would result in a tax of $1.11 a ton (1979 dollars) on eastern deep coal and $0.10 a ton on western surface coal. The coal tax on western surface coal in this case is only slightly higher than the current black lung tax in 1995 (10 cents vs. 7 cents in 1979 dollars). The tax on eastern deep coal, however, is more than seven times the current tax ($1.11 versus $0.15 in 1979 dollars) in 1995. This differential affects the distribution of production throughout the forecast period. By 1995, eastern deep coal mines are projected to produce 14 million tons (1.6 percent) less and western surface coal mines are projected top produce 16 million tons (1.9 percent) more than the base case. The shift in coal production from East to West is accompanied by a shift to lower quality coal; requiring more coal to be produced to meet the same Btu demand. As a result, total coal production is projected to increase over the base case by 3 million tons in 1995, while the total energy value decreases by 0.1 quadrillion Btu.

CONCLUSION

Total coal production grew at an average annual rate of 4.9 percent between 1975 and 1980.[2] Total coal production in the base case is projected to grow by 5.4 percent annually between 1980 and 1995. By 1995, coal is expected to account for 36 percent of gross energy consumption, twice its 1975 share. This analysis indicates that for the scenarios considered here, the growth rate in total coal production is almost unaffected by an increase in the black lung tax. As previously stated, since an increase in the black lung tax increases the projected average price of coal only slightly (in most cases by less than 1 percent), total demand for coal is relatively unchanged.

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[2] To more accurately reflect historical growth, 1975 was used as the base year rather than 1977. Coal production in 1977 and 1978 was reduced from what it would have been due to a coal strike which lasted from December 1977 to March 1978.

Table 2-1. Sensitivity of Coal Production to Various Black Lung Taxes, 1985-1995 (Million Tons)

1985

Region	Mining Method	History 1980	Current Tax[a]	Twice Tax[b]	Dollar Tax[c]	Ten Times Tax[d]	Two Percent of Sales[e]	Three/One Percent of Sales[f]
East...	Surface...	270	255	255	255	256	255	256
	Deep	315	419	419	419	412	413	409
	Total	585	674	673	674	668	668	665
West...	Surface...	217	332	332	331	334	338	341
	Deep	22	16	16	16	16	16	16
	Total	238	348	348	347	350	354	357
U.S....	Surface...	489	587	587	586	590	593	596
	Deep	337	435	435	435	428	429	425
	Total	824	1021	1021	1021	1018	1022	1022
	Lignite[g]	(47)	(89)	(89)	(89)	(89)	(89)	(89)
Total Production (quadrillion Btu)		18.7	22.6	22.6	22.6	22.5	22.6	22.6

1990

Region	Mining Method	History 1980	Current Tax[a]	Twice Tax[b]	Dollar Tax[c]	Ten Times Tax[d]	Two Percent of Sales[e]	Three/One Percent of Sales[f]
East...	Surface...	270	129	130	130	134	130	133
	Deep	315	653	650	649	643	643	635
	Total	585	782	780	779	776	773	768
West...	Surface...	217	536	536	536	538	544	553
	Deep	22	34	36	38	35	37	35
	Total	238	570	571	574	573	580	588
U.S....	Surface...	489	664	666	666	672	673	686
	Deep	337	687	686	687	678	680	670
	Total	824	1352	1352	1352	1349	1353	1356
	Lignite[g]	(47)	(192)	(192)	(192)	(196)	(192)	(192)
Total Production (quadrillion Btu)		18.7	28.8	28.8	28.8	28.7	28.8	28.8

1995

Region	Mining Method	History 1980	Current Tax[a]	Twice Tax[b]	Dollar Tax[c]	Ten Times Tax[d]	Two Percent of Sales[e]	Three/One Percent of Sales[f]
East...	Surface...	270	64	65	65	68	65	69
	Deep	315	864	863	862	855	858	850
	Total	585	928	928	927	923	923	918
West...	Surface...	217	828	829	827	844	833	844
	Deep	22	59	60	61	54	60	54
	Total	238	886	889	887	898	893	898
U.S....	Surface...	489	892	894	892	912	898	913
	Deep	337	922	922	923	909	918	904
	Total	824	1814	1817	1815	1821	1816	1817
	Lignite[g]	(47)	(308)	(309)	(308)	(347)	(308)	(308)
Total Production (quadrillion Btu)		18.7	37.5	37.5	37.5	37.3	37.4	37.4

[a] The black lung tax is assumed to be $0.25 per ton for surface mined coal and $0.50 per ton for deep mined coal.

[b] The black lung tax is assumed to be $0.50 per ton for surface mined coal and $1.00 per ton for deep mined coal.

[c] The black lung tax is assumed to be $1.00 per ton for both deep and surface coal.

[d] The black lung tax is assumed to be $2.50 per ton for surface mined coal and $5.00 per ton for deep mined coal.

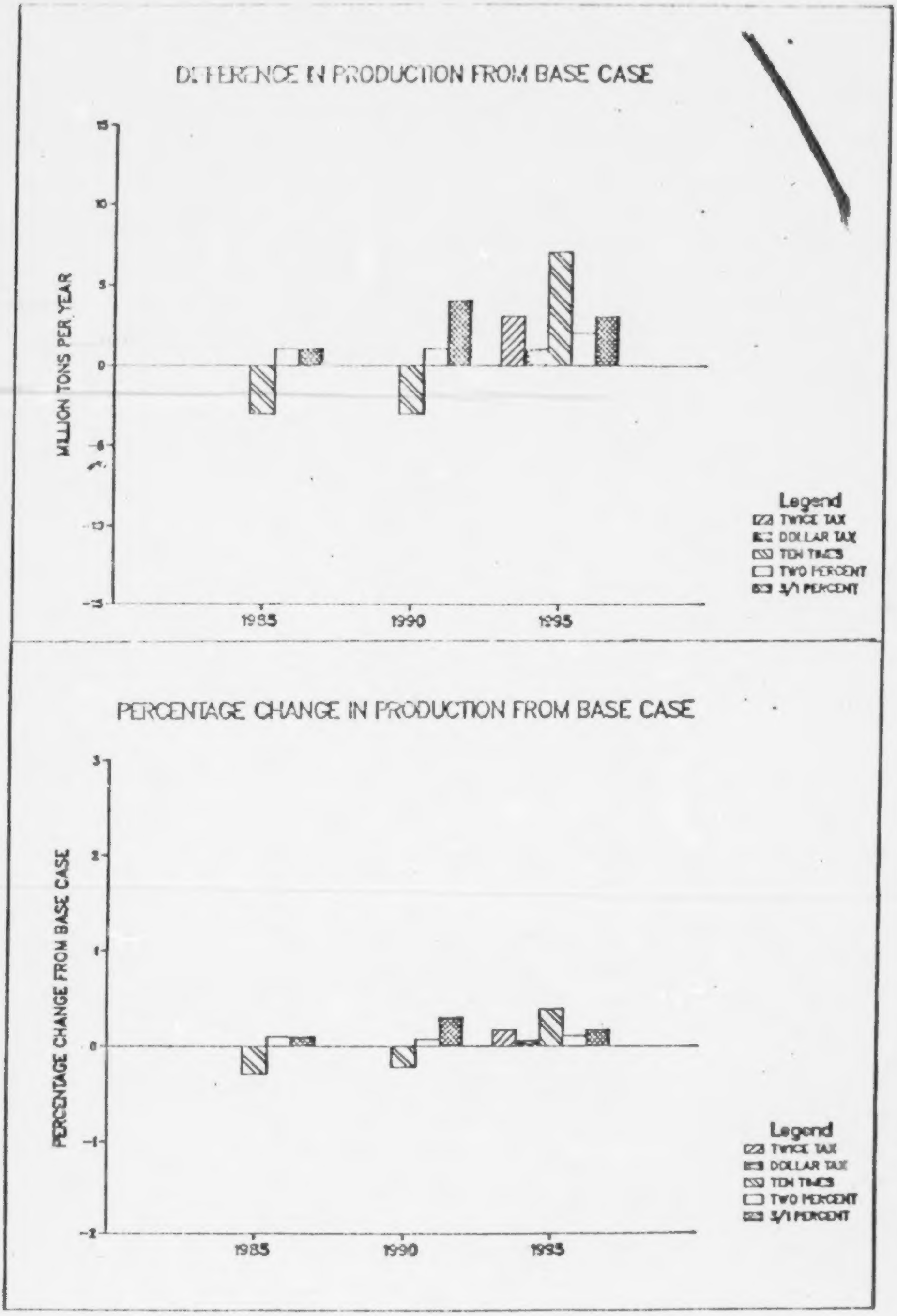
[e] The black lung tax is assumed to be two percent of the minemouth price.

[f] The black lung tax is assumed to be three percent of the minemouth price for deep mined coal and one percent of the minemouth price for surface mined coal.

[g] Lignite production, shown in parenthesis, is included in the western surface and total production figures.

Note: Numbers may not add to totals due to rounding.

Figure 2-1. TOTAL COAL PRODUCTION



DIFFERENCE IN PRODUCTION FROM BASE CASE

PERCENTAGE CHANGE IN PRODUCTION FROM BASE CASE

ENCLOSURE 3

Question: Would any of the possible tax increases above result in sizeable shifts in production from (a) underground-mined coal to surface-mined coal; (b) eastern coal to western coal; (c) high quality coal to lower quality coal; or (d) coal to other energy sources?

Answer: a.) Underground/Surface Production

A shift from underground mined coal to surface mined coal of from 1 to 3 percent occurs in three of the black lung tax scenarios when compared to the base case. These scenarios are: ten times the current tax, 2 percent sales tax on all coal, and 3 percent sales tax on underground coal and 1 percent on surface coal. The difference in underground and surface production from the base case is given below in both millions of tons and percent. These values are summarized in Figures 3-1 and 3-2.

Difference in Production from the Base Case
(Million Tons and Percent)

	10 Times Tax		2 Percent Tax		1% Surface-3% Deep	
Year	Deep	Surface	Deep	Surface	Deep	Surface
1985	-7(1.6%)	3(0.5%)	-6(1.4%)	6(1.0%)	-10(2.3%)	9(1.5%)
1990	-9(1.3%)	8(1.2%)	-7(1.0%)	9(1.4%)	-17(2.5%)	22(3.3%)
1995	-13(1.4%)	20(2.2%)	-4(0.4%)	6(0.7%)	-18(2.0%)	21(2.4%)

b.) East/West Production

Coal production shifts from eastern coal mines to western coal mines by 1 to 3 percent relative to the base case in three of the scenarios. These scenarios are: ten times the current tax, 2 percent sales tax, and 3 percent sales tax on underground coal and 1 percent tax on surface coal. The East/West shift parallels the underground/surface shift. The difference in East/West production in both millions of tons and percent from the base case is given below and summarized in Figures 3-3 and 3-4.

Difference in Production from the Base Case
(Million Tons and Percent)

	10 Times Tax		2 Percent Tax		1% Surface-3% Deep	
Year	East	West	East	West	East	West
1985	-6(0.9%)	2(0.6%)	-6(0.9%)	6(1.7%)	-9(1.3%)	9(2.6%)
1990	-6(0.8%)	3(0.5%)	-9(1.2%)	10(1.8%)	-14(1.8%)	18(3.2%)
1995	-5(0.5%)	12(1.4%)	-5(0.5%)	7(0.8%)	-10(1.1%)	12(1.4%)

c.) High/Low Quality Coal

Increased coal prices due to higher taxes induce coal users to switch to cheaper, lower quality coal (less Btu per ton), paralleling the East/West shift. Coal in the West is primarily surface-mined and of lower Btu content. The tax differential between surface and deep coal makes western coal more attractive. Of the five scenarios examined only the ten times the current tax case reduces the average energy content of a ton of coal by more than 0.5 percent, relative to the base case. The reduction is 0.8 percent in 1995 (20.66 million Btu per ton for the base case versus 20.49 million Btu per ton for the ten times the current tax case). Less production of premium coal (by 10 million tons), midbituminous coal (by 4 million tons), and subbituminous coal (by 23 million tons) is projected. Untaxed lignite, which averages 13 million Btu per ton, is projected to increase its production over the base case by 39 million tons in 1995. The other scenarios respond similarly to a price increase, but in no other case is the average Btu content reduced by more than 0.4 percent from the base case.

d.) Coal to Other Energy Sources

None of the Black Lung tax scenarios studied here projects overall coal production to decline by more than 0.2 quadrillion Btu (0.5 percent) in 1995. Consequently, the use of primary energy from other sources is not affected significantly by any of the black lung taxes included in this analysis.

Figure 3-1. DEEP COAL PRODUCTION

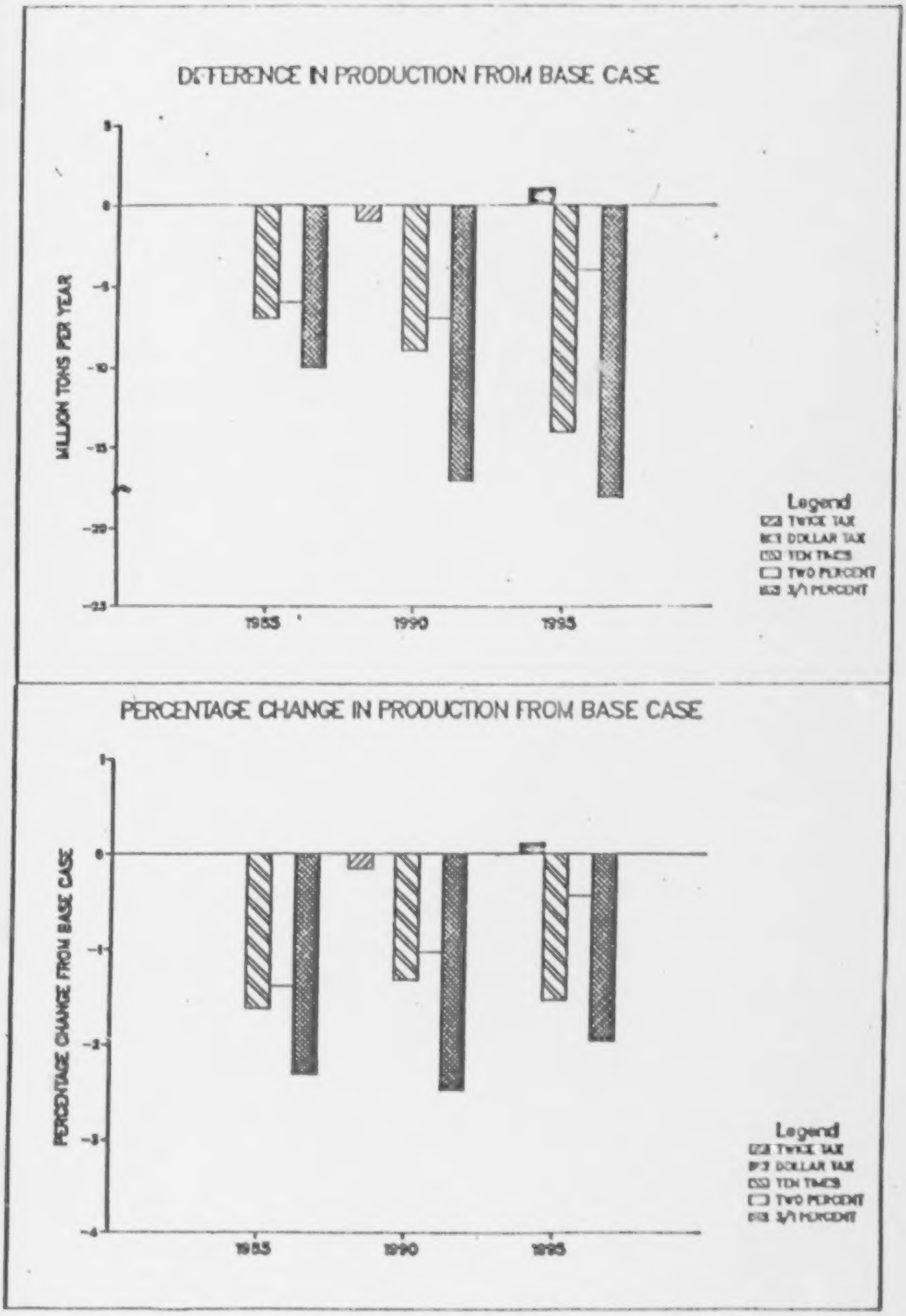


Figure 3-2. SURFACE COAL PRODUCTION

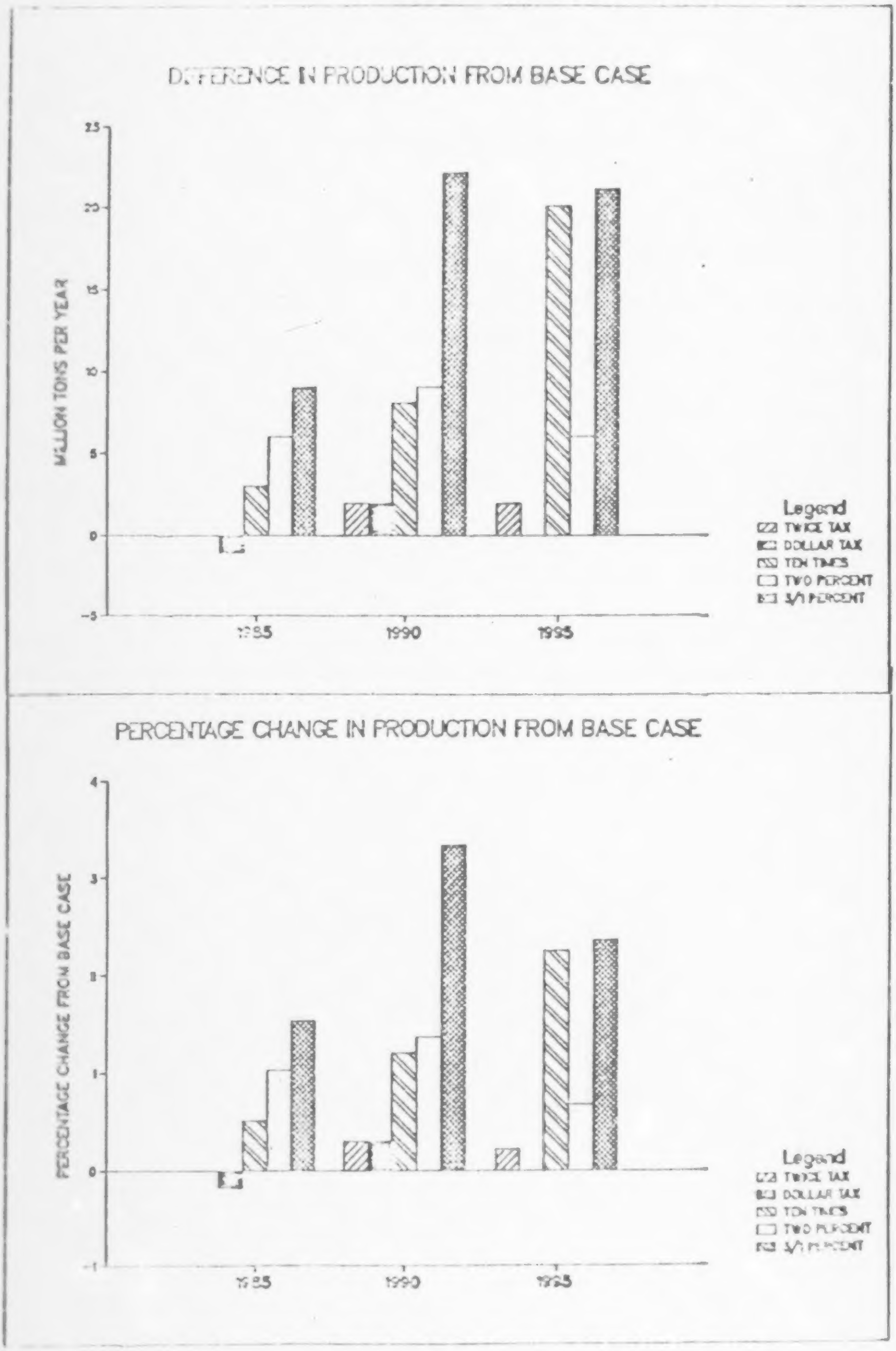


Figure 3-3. EASTERN COAL PRODUCTION

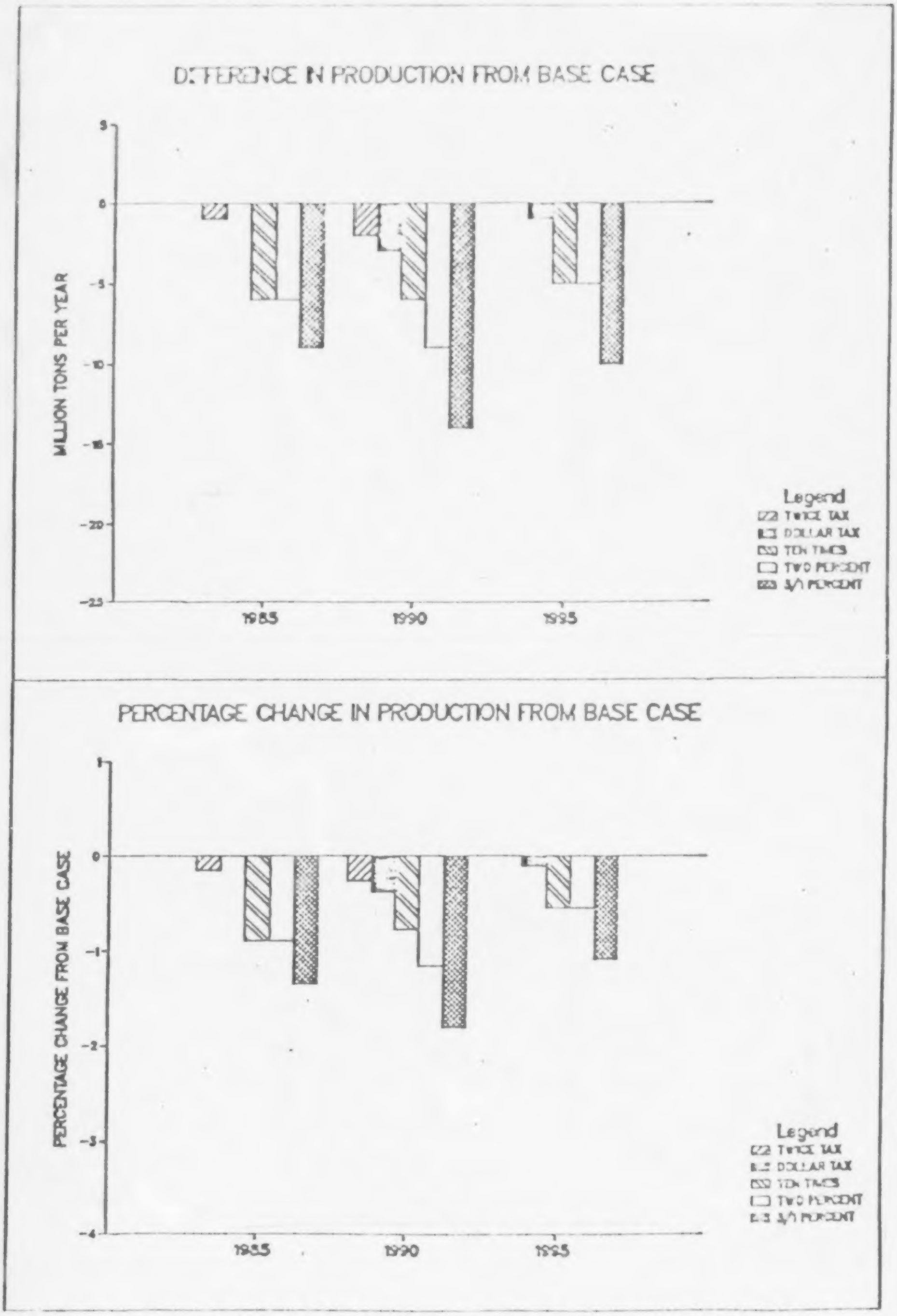
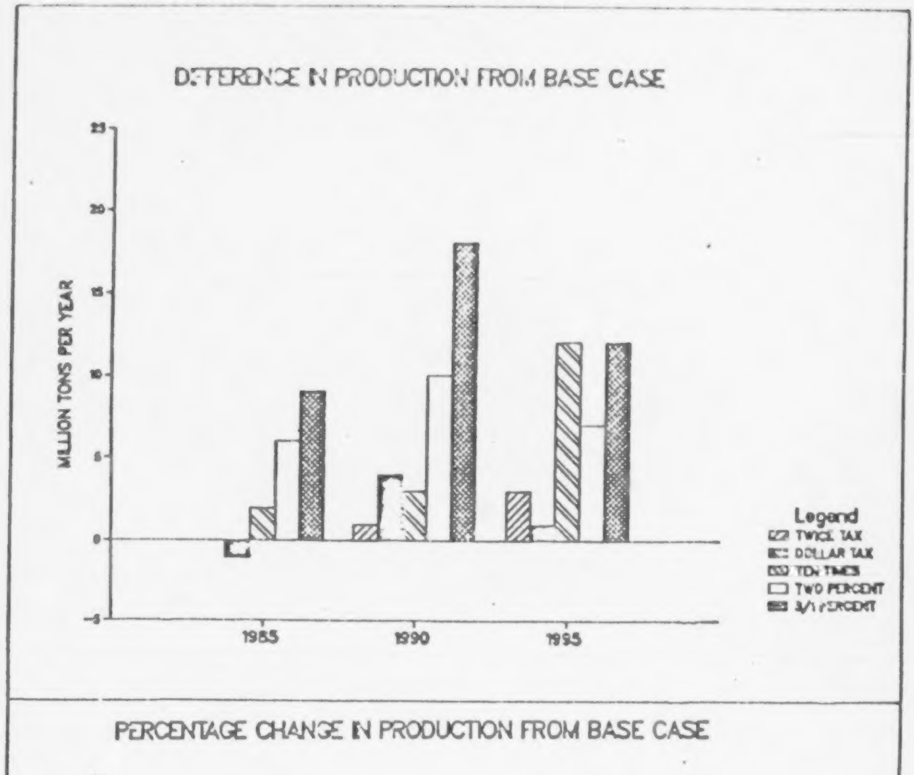


Figure 3-4. WESTERN COAL PRODUCTION



ENCLOSURE 4

Question: What are the three most important factors that would effect decreased coal production? Are tax increases and miner wage increases among the most important?

Answer: Many factors contribute to current and future coal production. On the supply side, coal production is dependent on variables, such as:

- Coal miner's wages
- Capital costs
- Interest rates
- Mine reclamation costs
- Coal severance taxes
- Federal leasing policies
- Productivity
- Coal preparation costs and yields
- Operation expenses
- Coal reserves
- Income taxes

On the demand side, variables which affect coal production include:

- World oil prices
- Transportation costs
- Environmental and energy regulations
- Electricity demand
- Capital availability
- Synthetic fuel demand
- Export demand
- Economic growth
- Natural gas prices
- Conservation

Determining the importance to coal production of a single variable is not easily achieved. An in-depth analysis of each one would be required in order to rank them objectively. Two examples follow which describe qualitatively the impact on coal production of different future events:

- Existing Regulations and Policies. The Powerplant and Industrial Fuel Use Act (FUA), for example, forces industrial boilers and utilities to use less oil and natural gas and more coal. If FUA was repealed or modified, coal demand and, consequently, coal production would decline in favor of oil and natural gas. Also, the Clean Air Act (CAA) sets pollution control standards for utilities. If the standards were relaxed so that utilities burning low sulfur coal were not required to have scrubbers, more low sulfur coal, and perhaps more coal in general, would be used.

- Availability of Capital. It is assumed that public utility commissions will grant a sufficient rate of return to electric utilities so they can attract the capital required to build new, coal-fired generating capacity. If they do not get sufficient rates of return, they will not be able to finance new plants, resulting in a decrease in the forecasted demand for utility coal. Also, if the world oil price does not rise as anticipated, coal-based synthetic fuel plants would be uneconomic and unable to attract the capital required to build them. This would result in less coal demand.

It would be impossible to evaluate the importance of all cost components through sensitivity analyses. For illustrative purposes, sensitivity analyses of three major components of coal delivered cost were performed. Coal transportation rates, coal miners' wages, and capital costs of coal mines were each increased in real terms by 3 percent annually over the base case values to depict the impact on coal production of large increases in the delivered cost of coal.

- Transportation Costs. Currently, transportation accounts for approximately one-third of the average delivered price of coal. Increases in transportation costs impact more heavily on future western coal production than eastern production due to the large distances western coal must be shipped. Increasing real transportation costs 3 percent annually over the base case costs causes projected eastern production to be 95 million tons (10.2 percent) more than in the base case in 1995. (See Table 4-1.) Western coal production is projected to be lower than in the base case by 208 million tons (23.5 percent) in 1995. Total coal production in 1995 is projected to be 112 million tons (1.6 quadrillion Btu) less than in the base case. Total energy demand is reduced by 0.8 quadrillion Btu, with oil and natural gas each supplying 0.4 quadrillion Btu of additional energy.

- Coal Miners' Wages. An annual increase of 3 percent in coal miners' real wages is projected to decrease coal production by 35 million tons (1.9 percent) in 1995 compared to the base case. Since underground mines require relatively more labor per ton of coal than surface mines, coal production shifts from the East to the West. Eastern coal production is projected to be 208 million tons (22.4 percent) lower than the base case in 1995, while western coal production is 173 million tons (19.5 percent) higher. Total coal production is projected to be 1.7 quadrillion Btu less than in the base case in 1995. Total energy use is projected to decline by 1.0 quadrillion Btu; 0.4 quadrillion Btu of oil and 0.2 quadrillion Btu of natural gas are used to replace the rest of the reduction in coal production.

- Capital Costs. A 3 percent annual increase in real capital costs of coal mines is projected to reduce coal production in the base case by 28 million tons (1.5 percent) in 1995. Coal production in the East in 1995 is projected to be 50 million tons (5.4 percent) lower than the base case while western coal production is 22 million tons (2.5 percent) higher. The large real capital cost increases in this scenario raise the cost of underground mining more than that of surface mining, which induces the user to purchase more of the lower quality coal found in the West. Projected coal production in this scenario is reduced from the base case by 0.8 quadrillion Btu in 1995. Only 0.1 quadrillion Btu more oil and 0.2 quadrillion Btu more natural gas are used in 1995 than in the base case. Total energy consumption is 0.5 quadrillion Btu lower than the base case in 1995.

Table 4-1. Sensitivity of Coal Production Based on Alternative Input Costs, 1985-1995
(Million Tons)

			1985			
Region	Mining Method	History 1980	Revised Base Case	Transportation Cost Increase[a]	Wage Increase[b]	Capital Cost Increase[c]
East...	Surface...	270	255	258	260	252
	Deep	315	419	423	363	410
	Total	585	674	681	623	662
West...	Surface...	217	332	301	372	337
	Deep	22	16	23	17	16
	Total	238	348	323	390	353
U.S....	Surface...	489	587	558	632	588
	Deep	337	435	446	380	427
	Total	824	1021	1004	1013	1015
Total Production (quadrillion Btu)		18.7	22.6	22.4	22.1	22.4

			1990			
Region	Mining Method	History 1980	Revised Base Case	Transportation Cost Increase[a]	Wage Increase[b]	Capital Cost Increase[c]
East...	Surface...	270	129	130	132	119
	Deep	315	653	685	519	628
	Total	585	782	815	651	747
West...	Surface...	217	536	450	633	559
	Deep	22	34	45	49	36
	Total	238	570	494	682	595
U.S....	Surface...	489	664	580	765	678
	Deep	337	687	729	568	664
	Total	824	1352	1309	1333	1342
Total Production (quadrillion Btu)		18.7	28.8	28.3	27.7	28.4

			1995			
Region	Mining Method	History 1980	Revised Base Case	Transportation Cost Increase[a]	Wage Increase[b]	Capital Cost Increase[c]
East...	Surface...	270	64	69	65	61
	Deep	315	864	954	655	817
	Total	585	928	1023	720	878
West...	Surface...	217	828	607	997	851
	Deep	22	59	71	62	57
	Total	238	886	678	1059	908
U.S....	Surface...	489	892	677	1062	912
	Deep	337	922	1025	717	874
	Total	824	1814	1702	1779	1786
Total Production		18.7	37.5	35.9	35.8	36.7

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[a] Assumes real coal transportation costs increase 3 percent annually.
[b] Assumes real coal wages increase 3 percent annually.
[c] Assumes real coal capital costs increase 3 percent annually.
Note: Numbers may not add to total due to rounding.

ENCLOSURE 5

Question: Do you expect to revise your future coal production estimates this year? Do you anticipate that such revisions, if any, might change the information you provided on the items above?

Answer: Each year the Energy Information Administration produces an Annual Report to Congress (ARC) which provides forecasts of energy supply and demand for the 1985 to 1995 time frame. The development of the 1981 ARC is currently in progress with the report scheduled for completion in the Spring of 1982. A number of assumptions will be modified in the 1981 report which will make the energy balances different from the revised base case of the 1980 ARC used in this analysis. These are discussed below.

Since the supply of coal in the United States is demand constrained, domestic coal production during the next several decades will depend largely upon the amount of coal consumed by electric utilities and industry, and the amount of coal exported to other industrialized Western Nations. It is expected that the 1981 ARC coal production forecasts will differ from the revised 1980 ARC forecasts due to changes in the coal demand projections. The extent to which the two coal demand forecasts differ will depend on the changes made to the annual report assumptions since the revised forecasts were prepared. It is not possible to determine a priori what the combined effect of these changes will be on total domestic coal production since some of the changes will stimulate domestic production while others will reduce it. In addition, each change has secondary effects on the U.S. energy market which cannot be quantitatively estimated before the 1981 analysis is completed. However, the major changes are listed below and, where possible, the anticipated quantitative effect is given.

- A new, more optimistic, macroeconomic outlook incorporating the Economic Recovery Tax Act of 1981, will be used which could increase coal production.
- Fewer new coal-fired power plants are assumed to be operating in 1985, 1990, and 1995, which will reduce coal demand by approximately 0.9 quadrillion Btu (35 to 40 million tons) in 1995.
- More energy conservation in the industrial sector is assumed, which could lower coal demand by 2 to 8 million tons per year.
- A higher coal export forecast has been developed which will increase domestic production over the revised base case by 9, 17, and 28 million tons in 1985, 1990, and 1995, respectively.
- Increases in the estimated costs of synthetic fuels from coal could reduce coal demand in 1995 by 70 to 100 million tons.

Overall, these changes indicate that projected coal demand will be lower and thus total domestic coal production will be lower in the 1981 ARC than the revised base case. However, the actual decrease in coal production expected in this year's report is not expected to exceed 5 percent in 1995. Although total production is expected to decrease, the impacts of changes in the black lung tax on coal production, discussed in this analysis, will essentially remain the same.

Chairman **Rangel**. Our last witness is Robert K. Briscoe, from J. Huell Briscoe & Associates. He is the vice president, Robert Briscoe.

STATEMENT OF ROBERT K. BRISCOE, VICE PRESIDENT, J. HUELL BRISCOE & ASSOCIATES, CHICAGO

Mr. **Briscoe**. Thank you, Mr. Chairman.

Chairman **Rangel**. Mr. Briscoe, I have been advised by staff that your firm has made a substantial contribution of trying to clear up the problem that we do have, and that the document that you submitted has shown a great deal of professional work. You indicated your experience in this area.

You may proceed as you find comfortable. At this point, without objection, I will have your testimony entered into the record.

Mr. **Briscoe**. Thank you, Mr. Chairman.

My name is Robert Briscoe, a vice president of J. Huell Briscoe & Associates of Chicago, Ill., a consulting actuarial firm.

Since 1975 I have directed extensive work and research on black lung compensation requirements in the coal and insurance industry. My work includes projecting the current and future liability for black lung claims for a number of the Nation's largest coal operators and thus by necessity, extends into virtually every aspect of black lung, including the Federal Black Lung Disability Trust Fund. I am appearing here today at the request of the committee, as a private citizen, with the knowledge of, but not on the behalf of any of my clients.

Mr. Chairman, a great deal of the statement I have prepared has been covered today. I would like to proceed with perhaps a general summary of it rather than just a straight reading of the statement. I have tried to put in the statement some sense of the history of the trust fund, as I believe it is essential in trying to determine where it is to go from here, to understand where it came from in the first place.

My sense of the problem stems from the first premise that the trust fund is a creature of a backlog of claims—it was conceived in response to the backlog. The backlog arose both because the difficulties the Department of Labor had in the 1970's with dealing with the large influx of claims, and from the timing of the entire black lung program. The original part (B) of the Federal act, which is and is financed from general revenues of the Federal Government, was conceived of as capturing the liability for the older work force, the preseventies work force, which was substantilly larger in terms of coal miners than the number of miners working today.

The part (B) program essentially had approximately 600,000 claims filed under it, of which 400,000 were entitled and to which about $10 billion has been paid through this year. The evolution of the black lung program was such that the part (B) program was ended at a specific date in time—July of 1973. Unfortunately, at that point there were still considerable numbers of former underground coal miners still alive and still filing claims.

Between 1973 and 1978, an additional 125,000 claims were filed, relatively few of which came from the working population, less than 25 percent. It is these backlog cases which have led us to the trust fund problem that we have today. The creation of the trust fund was really in response to having to do something with this large body of claims. The problems inherent in affixing responsible operator liability to this large body of claims proved to be essentially impractical, and, of course, the financial impact of those claims directly upon individual coal operators proved to be a significant problem.

All of this might have been considerably less of a problem had the Department of Labor been able to steadily adjudicate and set out the claim awards stemming from this backlog of claims. Unfortunately, that didn't occur either, and essentially the claims built up in the Department of Labor, only to be dealt with after the Reform Act of 1978.

The point that I believe is important in dealing with the trust fund problem is that it is and was a response to a backlog of claims, and I believe essentially that backlog of claims is over with. The monthly filing statistics of claims being newly filed for the first time are on a very steep downward trend. It is only logical to assume that sooner or later, coal miners whose last employment was before 1970 will have all filed a claim to the extent that they are still alive today. Although many people have said that over the last 10 years, and then be proven wrong.

But I think the general sense of the problem, really should be toward the set of claims that are there today, and the problems in dealing with that set of claims. There may be some few additional claim filings from older miners who last worked before 1970 coming in over the space of the next year or so.

Every piece of information I can gather indicates that the claim filings from preseventy employment coming in are more and more showing reduced amounts of coal employment. In other words, we are now seeing claims from people who were only marginally employed in the coal industry many years ago, and it is my understanding and observation of the current medical regulations that these claims have a very low prospect of becoming awards under any set of rules, and certainly the current set.

The problem of dealing, or stating the trust fund liability is quite complex. As people from GAO testified this morning, the models being used contain a large number of variables, I believe they said 80 in respect to the Department of Labor's model, and that probably is a good number.

My perception of the problem, though, first of all, it is not necessarily a problem of a number of variables of these models. You can hope to obtain very accurate results, assuming that you identify all the proper variables and treat them properly. My problem in dealing with the trust fund deficits is more one of the data, the basic bottom line statistical data that must go into the models.

The Department of Labor has had difficulties all through the history of the black lung in attempting to record, maintain, and interpret the statistical data. Much of the history, up through at least until several years ago, they have very, very little statistical data, and much of it was of questionable reliability. Things have improved considerably since then. However, there is a long way to go.

In my own perception of the problem, the number of variables, and perhaps the uncertainty of many of the variables is not as much of a problem as getting a better fix on some of the bottom line statistics that go into the models. It should be kept in mind that in many cases these variables tend to cancel each other out. In other words, you can produce a model that is--that deals with two different independent things, and both deals with them incorrectly, but the effect might cancel each other out in the middle, and the model may very well be perfectly valid.

In addition to the more normal variables and data variables involved in this trust fund, we also have some fairly important and difficult problems with regard to the timing of future actions in these claims. We have claims that are being paid by the trust fund in which operators are controverting the claim. The timing of the controversions is, to me, a considerable problem, since apparently the administrative law judge and Benefit Review Board resources necessary to deal with these claims are going to force a fairly long time period for many of these controversions.

There is the question of claims that are initially paid by the trust fund in which the operator successfully controverts the claim. Therefore, the operator will not reimburse the trust fund for those payments. Whether the trust fund can recoup those payments from the claimant or not is one of the things in question.

And as was discussed earlier today, the problem of capturing the State claim offset is one which I think is still up in the air at this point.

Chairman RANGEL. Why are these things up in the air? What is it that I am missing that makes these things stay up in the air?

Mr. BRISCOE. Again, I think we have to come back to the backlog problem. We have a tremendous number of claims, approximately 100,000 claimants. All of the activity with regard to putting these claims in payment status and everything else has occurred in about a 24-month period. And only recently, have many of the activities that we are discussing here have actually started. So while it would seem to be a simple thing to find out whether a claimant has a State chairman or not, within the context of a 100,000 claim files, there are problems.

I don't think anybody is trying to minimize them. DOL is certainly making attempts to do this. However, I have myself seen cases where State or Federal claim has been paid, even though a State claim is in payment status.

Chairman RANGEL. But are the tools locked into place where you could find out? Do you know whether or not the beneficiaries are supposed to notify the Federal Government? Is the State supposed to notify the trust fund? Is the trust fund supposed to look at samples? How is it supposed to work ideally?

Mr. BRISCOE. The first step, of course is that the claimant, as I understand it, not being a lawyer, but I understand that he has a legal obligation to notify it. I do believe in many cases a claimant may be honestly confused as to who he is supposed to notify what to or what the document that he may have in question means.

Chairman RANGEL. But you could put something in the next check indicating what the beneficiaries obligations are—to report to this department. You do it with unemployment compensation. If you get a job, you are not entitled to benefits. You have to constantly remind people who are getting it but are ineligible for workmen's compensation.

Mr. **Briscoe**. I am not suggesting this will not happen. I do believe it will. I do believe the failure to police this at a very high level have had a significant impact on this program. There are many, many State claims that have been paid for black lung over the past 7 years, and those claims are the same claims that are being controverted by responsible operators. So the two mix together into a very complex scenario.

I think just briefly to conclude, the problem is truly one of a onetime situation, in my opinion. We don't expect to see that high a level of future claims coming from the working population that there should be significant impact on the trust fund one way or the other. Assuming that the current downward trend in claim filings continues, and I believe it will, then certainly by next year, we will be dealing with a fairly small number of claims in terms of this context, most of which probably will also have a State claim running, too, which means that the impact on the trust fund is going to be quite minimal.

The problem is really one of dealing with the body of claims that are here today. Obviously, I believe setting the revenue at some level which is going to make financial sense. It would help, I think, significantly to end the practice that is currently going on of paying the retroactive benefits to a claimant where the responsible operator is controverting the claim. Of course, absolutely insuring that the State offsets are taken, and I believe insuring sufficient administrative law judge resources are put forth so that the controversions of the claims will proceed in a reasonable timeframe.

It is quite possible at this point to see the controversion of claims extend out more than 3 years. With regard to the significant portions of the trust fund liability at this point, that, of course, builds a deficit because of the interest charges on the payments that are going out and have gone out.

I believe that it is essentially that the Department of Labor build and maintain a data base of statistics which can be used within these projections. I am not sure that they are entirely to that point today. I think obviously constant monitoring of this situation to prevent surprises such as backlogs or anything else showing up again, would go a long way toward making sense out of the program that has sometimes not seemed to make sense so far.

Chairman **Rangel**. Mr. Briscoe, I want to thank you and our firm for your contribution to these hearings. I think this is a classic example where a firm actually receives profits by having clients that have a vested interest in matters before the Congress, can come as a lobbyist and/or as a witness and be objective and to make a contribution toward the intelligent formation of laws and regulations that are going to affect the American people, as well as your clients.

We think that while people in firms such as yourself, are subjected to high criticism by press and sometimes the unknown public in terms of what is referred to as lobbying. I think that your contribution to these hearings is a classic example as to how the Government can benefit from a broadening of experience.

Mr. **BRISCOE**. Thank you, Mr. Chairman.
[The prepared statement follows:]

STATEMENT OF ROBERT K. BRISCOE, VICE PRESIDENT, J. HUELL BRISCOE & ASSOCIATES, CHICAGO

INTRODUCTION

I welcome this opportunity to comment on the Federal Black Lung Disability Trust Fund. My name is Robert Briscoe; I am Vice President of J. Huell Briscoe & Associates, Inc., a consulting actuarial firm based in Chicago, Illinois. Since 1973 I have directed extensive work and research on Black Lung compensation for clients in the coal and insurance industry. My work includes projecting the current and future liability for Black Lung claims for a number of the nation's largest coal operators, and, thus, by necessity, extends into virtually every aspect of Black Lung, including the Federal Black Lung Disability Trust Fund. I am appearing here today at the request of the Committee, as a private citizen, with the knowledge of, but not on behalf of, any of my clients.

HISTORY OF BLACK LUNG COMPENSATION WITH REGARD TO THE TRUST FUND

Federal Black Lung compensation began on January 1, 1970 with the federally financed "Part B" portion of the Act. Part B evolved, through the 1969 Act and 1972 Amendments, into a scheme to compensate, from general revenues, the large numbers of former coal workers and their survivors whose last employment in the coal industry was during the pre-mechanized era of the early 1950's and before. Eventually approximately 600,000 miners and their survivors filed Part B claims, of which approximately 400,000 were entitled to benefits. Approximately $10 billion has been paid to these claimants since 1970. The ongoing compensation program for Black Lung claims was modified by Congress in 1972 with the intention of placing the burden of payment for future claims expected to arise from the current working population on the coal industry. The mechanism to do so was to make all claims filed after July 1, 1973 the responsibility of the last responsible coal operator, if one could be found. If the majority of claimants from the pre-1970 work force had, by July, 1973, filed their claim under Part B, then this mechanism may have proved to be a workable one. Unfortunately, the claims from former coal workers continued to appear in large numbers, such that between 1973 and 1978, an additional 125,000 claims had been filed. Of the 125,000, approximately, 20,000 were refilings by claimants who had previously filed a Part B claim which had been denied, and approximately 90,000 were again from claimants who last worked in the coal industry prior to 1970.

The large component of claims from the past work force proved to be a very troublesome problem for both the Department of Labor and the coal industry. DOL, of course, among their many other problems, had the difficult task of identifying last responsible operators where the last employment had been 10, 20, or more years ago. The coal operators faced the equally serious prospect of attempting to quantify their exposure to claims, since even if they could establish how many miners worked for them in prior periods, they could not know how many might still be alive to file a claim, nor how many already did so under Part B. The uncertainty of the liability, coupled with the magnitude of the liability over and above that which was expected to arise solely from the working population created a problem with Part C of the Act, the solution to which was the Federal Black Lung Disability Trust Fund.

The Fund arose as a solution to the problem by fulfilling three purposes:

1. It reduced the uncertainty of responsible operator liability by placing all claims whose last employment in the coal industry was prior to January 1, 1970 into the Trust Fund.
2. It reduced the financial impact of those claims by financing the payments via a uniform tax on coal.
3. It satisfied the goals of the proponents of Black Lung compensation by providing for a controversion-free mechanism for the pre-1970 claims.

It can be argued that none of the three elements listed above would have become a problem if the Department of Labor had, from 1973 to 1978, expeditiously adjudicated the claims at a steady pace during the five-year period. Unfortunately, this was not the case, so that the newly-created Trust Fund, in 1978, had to deal with a five-year backlog of 125,000 claims. The existence of this backlog is the key to the Trust Fund's present difficulties. The backlog problem was further compounded by the addition of yet another set of claims to the Trust Fund mechanism, i.e., the

180,000 Part B claims which had been denied by the Social Security Administration under Part B. The Reform Act provided that these claimants be given the opportunity to have their claims reconsidered; 118,000 chose to do so. The bulk of these reconsiderations were initially made by the Social Security Administration. SSA had none of the staff problems present at DOL, so that the very first influx of claims paid by the Trust Fund were, in fact, the 22,000 Part B denials reconsidered and approved by SSA. The 22,000 SSA approvals represented a 27 percent approval rate—something close to four times that which was expected when the Reform Act was enacted. SSA processed virtually all their claims from mid-1978 through June of 1979. The Department of Labor, during the same period, was hiring personnel and setting up the district office system. DOL did not start introducing significant numbers of awards into the Trust Fund mechanism until the spring of 1979, and did not reach their full production goal until late 1979.

The influx of large numbers of claims very early in the life of the Trust Fund, coupled with the fact that the incoming claims were all three to five years old when they first went into payment status, virtually guaranteed that there would be Trust Fund deficits. If any provision of the Reform Act was needed to make the guarantee absolute, the part added requiring the Trust Fund to reimburse the Department of Labor for its administration of the Act from 1973 to 1978 did a fine job, since the $89 million paid to the Treasury in 1978 for that reason practically wiped out the early assets of the Fund before the first benefit payment was ever made. The rest is history, of course, with monthly outlays of $50 million to $100 million plus during 1979 and 1980, and monthly revenues around $20 million, resulting in the current billion-dollar plus deficit.

DISCUSSION OF THE MECHANICS OF THE TRUST FUND MECHANISM

The Federal Black Lung Disability Trust Fund makes payments for monthly Black Lung benefits, medical treatment and diagnostic payments, administrative expenses and interest expenses on deficits, if present.

The Fund pays monthly benefits and medical benefits to:

1. Claimants with pre-1970 coal employment;
2. Claimants with post-1970 coal employment for whom no responsible operator can be found;
3. Claimants with post-1970 coal employment for which a responsible operator has been found, but who has not begun to pay benefits.

With respect to (1) and (2) above, no controversion of the claim is provided for, so that every claim presented to the Fund is automatically paid. With respect to R/O claims, payments (including back benefits) are paid while the operator controverts the claim. The Trust Fund must then recover from the operator payments made if the operator eventually agrees to pay benefits. If the operator is successful in controverting the claim, any recovery by the Trust Fund must come from the claimant.

The Trust Fund revenue comes from a tax on coal production—currently 50 cents for underground coal, and 25 cents for surface coal, not to exceed 2 percent of the sales price of the coal. The monthly revenues from this tax have rarely exceeded $22 million per month, and are, of course, subject to the numerous natural, economic and labor factors which affect coal production often dramatically.

To the extent that monthly expenditures exceeding income borrowings from the U.S. Treasury occur, ongoing deficits incur interest charges at current interest rates, until repaid. The current deficit, as of April, 1981, is $1.2 billion.

DISCUSSION OF THE ACTUARIAL ASSUMPTIONS NECESSARY TO PROJECT TRUST FUND EXPENDITURES

The Federal Black Lung Disability Trust Fund is currently making payments to approximately 100,000 coal workers, their spouses, and dependents. The payments are, with the exception of those made to dependents under age 18, for life. Even though the average age falls in the late sixties, the span of the bulk of the lifetime payments will be more than 30 years. Actuarial projections of similar payment streams are, of course, routinely done, both in the private sector, and in government. Rarely, however, in either sector does one encounter a program as complex as this one.

The normal actuarial assumptions necessary for a projections of this sort are:

Population
Mortality tables for the coal workers and their spouses
Benefit rates payable
Timing of the payments

Assets and monthly income for the plan

An escalation rate assumption for future benefit increases

An interest charge assumption for current and future deficits

The unique aspects of the Federal Black Lung Disability Trust Fund require a set of additional assumptions be established. These include, but are not limited to:

The timing of the adjudication of currently pending claims, and the number of such claims to reach payment status;

The number of responsible operator claims which will be:

(A) Initially paid directly by the operator;

(B) Initially paid by the Trust Fund, and then paid by the operator at some future point, and the timing of the operator reimbusement;

(C) Initially paid by the Trust Fund and successfully controverted by the operator, resulting in a cessation of payments;

(D) The rate of success the Trust Fund will have in recovering the overpayment resulting from (C) above;

(E) The future number of Trust Fund and R/O claims the Fund must pay.

(F) A large series of timing assumptions as to when (A) through (E) above will occur.

The number of claims denied by the Department of Labor, appealed by the claimant, and ultimately approved.

DISCUSSION OF THE DATA PROBLEMS ASSOCIATED WITH PROJECTING TRUST FUND EXPENDITURES

The Federal Black Lung program has been plagued from its very inception by problems in recording, maintaining and interpreting statistical data. During most of the history of the programs, the Department of Labor's struggles with the mounting backlog of claims precluded all but the most rudimentary statistical activities. It can be said, with little fear of exaggeration, that until two to three years ago, DOL knew little about the makeup of the claims filed beyond the number of awards, denials, and pending claims. The Department has made considerable progress since those days; however, many problems still remain.

Obviously, such a large volume of data is best kept track of via a computer system, and DOL has a system for that purpose. Unfortunately, the unreliable quality of the data entry into the computer has been such that little reliable information can be obtained from it. The Department also maintains a manual count system which is used for many reporting purposes.

The manual system rarely produces enough detail to be of use in projections such as this.

The result is that the DOL's projections to date have been based upon claim counts and other statistical data pieced together from both computer and manual systems, samples of data, and in some cases, educated guesswork. This does not necessarily imply that the results so obtained are not valid and useful—indeed, the individuals involved are competent and knowledgeable, and have probably produced very reasonable results. Neither they nor anyone like myself, however, can hope to ascribe a high level of confidence to the projections if the data at the foundation of the projection is somewhat shaky.

DOL has been, and is making efforts to improve the statistics, especially with regard to the computer data base. I can only suggest that the sooner they do so, the more comfortable we can all feel concerning the Trust Fund projections.

PERCEPTIONS OF THE CURRENT PROJECTIONS AND RECOMMENDATIONS TO THE COMMITTEE

The current Trust Fund deficit projections recently produced by the Department of Labor are being done, in my opinion, by competent professionals using acceptable actuarial modeling techniques. My staff and I have had opportunities to review DOL's program and assumptions, and at least at the general level, find them reasonable. I have had a number of areas of disagreement as to technique, and timing, and understand that DOL has recently upgraded their program to resolve some of them. I have not had time to review these changes as yet; however, I assume that most of the problems are now resolved.

The most troubling aspect of the current DOL projections is, to me, the data being used, going into the model. Many of the numbers carry less than the desirable amount of documentation, and often change from time to time in unexpected ways. As I discussed before, the cleanup of the basic statistics is fundamental to the entire program.

The DOL model, especially in the projections beyond the next several years, has to deal with problems that are hard to quantify. These include the future number of claims awarded out of the working population, the complex interaction between responsible operator claims and the Trust Fund, the future levels of coal production, and the likelihood of repayment for R/O claims which operators successfully defend. Little hard data exists as to any of the above. Additional complications arise from the legal complexities of the R/O controversion mechanism. In my opinion, the R/O-Trust Fund payment interaction is virtually impossible to quantify until the delays involved in holding Administrative Law Judge and Benefit Review Board hearings are resolved. The ALJ/BRB process represents a funnel through which thousands of cases must pass before the Trust Fund can be reimbursed. The current delays involved appear to stretch the repayments over 3 to 5 years, contributing to the deficit and substantially increasing the difficulty of making accurate short-term projections.

RECOMMENDATIONS TO THE COMMITTEE

The Trust Fund deficit problem is one, in my view, of understanding, and in the end, living with a one-time problem which arose from a complex situation. All available data indicates that the backlog of pre-1970 former coal workers has at last been worked through. Both the rate of new claim filings and the approval rates are now declining, and I feel can be expected to reach a stable level soon. Eventually the only new claims to be dealt with will be claims arising from the working population—probably 2,000-3,000 approvals per year. (The monthly filings for the past several months extrapolated to an annual rate show 8,000-9,000 per year—a year ago the annual rate was 25,000.) Such trends are assumed by DOL in their model and at least so far, seem to be working out. Once the new claim filings reach the point of coming primarily from the working population, the influx of claims to the Trust Fund will essentially be cut off, since almost all such claims will be charged to a last responsible operator. At that point, aside from making the remaining payments to the existing beneficiaries, the Trust Fund problem will be over. It is my belief that this process will be accelerated, even beyond DOL's projections, since most newly arising federal claimants should also have state Black Lung claims with partial or complete offsets. To the extent this occurs, any Trust Fund payments are minimized, or eliminated.

There are, of course, many aspects of the program which could be improved upon. These include:

Setting the Trust Fund revenue at a level which will prevent further deficits from occurring.

Ending the practice of paying all retroactive benefits due on R/O claims being put into interim pay status.

Absolutely insuring that all state offsets are made in federal benefit awards.

Insuring that sufficient Administrative Law Judge and Benefits Review Board resources exist to quickly adjudicate the controverted cases.

Ensuring that the future administration of the Black Lung program will provide the necessary statistical data.

Monitoring its progress and ensuring that never again will backlogs and other "surprises" occur.

Thank you.

Chairman RANGEL. Before you leave, staff wants to perfect our record. The first question, are mine operators charged, in your opinion, an adequate rate of interest when required to repay the trust fund for advances to beneficiaries? It is our understanding that it is only 6 percent.

Mr. BRISCOE. That certainly doesn't bear much relationship to the current interest situation.

Chairman RANGEL. I can see here we ought to have the benefit of your professional experience. The administration has promised proposed changes in black lung criteria only prospectively. The rate is already down to 20 percent which you indicated in your testimony. In view of these facts, would it be possible to balance the trust fund by 1985 or 1990 without a substantial tax increase, and are there any other reasons why it may be necessary for a tax increase being the primary means of balancing the trust fund?

You covered part of this.

Mr. BRISCOE. Well, it is obviously difficult for everyone to try to make too many specific projections on this. The biggest single variable with regard to the trust fund solvency is probably one that has almost nothing to do wth the claim process. The biggest single variable with regard to numbers is probably coal production number that was testified to before. Assuming that those production estimates are correct, then I believe it is probably very difficult to come up with a scenario that would eliminate the deficit without some tax increase.

I believe the amount of the tax increase is very much a question for a lot of serious review. There are a number of factors here that probably have not been completely addressed, including the State claim offset question, that may affect the current projections that have been made rather dramatically.

In specific answer to your question, I find it very difficult to see that the current tax rates would produce any sort of solvency within the period that you are talking about.

Chairman RANGEL. The last question is that the General Accounting Office indicated that bronchitis and some of these other ailments that makes a claimant eligible, goes away after some period of time.

Mr. BRISCOE. With respect to bronchitis, it is my understanding that this may occur. Certainly in some cases the pneumonconiosis simply doesn't go away. It has never been documented as doing so. It is my perception that the bulk of the adjudication of these claims centers around simple coal workers pneumonconiosis rather than bronchitis. I wouldn't foresee large numbers of claims being terminated at sometime in the future on a showing of getting better.

Chairman RANGEL. Well, thank you.

I assume from the committee's feeling of the contribution that you have made that we could feel free to contact you for further information?

Mr. BRISCOE. Certainly.

[The following was subsequently received.]

J. HUELL BRISCOE & ASSOCIATES, INC.,
ACTUARIES AND MANAGEMENT CONSULTANTS,
Chicago, Ill., September 25, 1981.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. RANGEL: With respect to the further questions contained in your August 21, 1981 letter, I am providing the following supplemental information.

Question (1)

The mortality of Black Lung claimants is a subject which evokes considerable controversy, but which has not been studied on a large scale. Although some studies have been published by various medical researchers, no work has yet been published which covers the present group of coal miners and their spouses who are or are about to receive benefits. In general, the mortality tables being used by the coal industry, the insurance industry, and the Department of Labor are population tables compiled from census data of the entire U.S. population. These tables measure the mortality of wide segments of the population, including both people in "normal" health and people who have all types of injuries and illness, with all degrees of disabilities.

The evidence to date is that the actual mortality of Black Lung claimants is no worse than the U.S. Lives Mortality Tables predict. Dr. J. Donald Millar, Director of the National Institute for Occupational Safety and Health, confirmed this observation independently before your Committee on July 27, 1981.

I would like to emphasize that the entire subject of Black Lung mortality is only beginning to be studied on a large scale, both by government and the private sector. Unless and until these studies are further advanced, there is general agreement among most of the actuaries working with the insurance and coal industries that the U.S. Lives Mortality Tables are the most appropriate current measurement of mortality among Black Lung claimants and their spouses.

Question (2)

It is my understanding that the principal reason for the delays in holding ALJ hearings is the sheer number of claims for which a hearing has been requested by either the claimant or the coal operator. These requests for hearings have overwhelmed the number of available Administrative Law Judges.

The uncertainties of the application of the medical and legal criteria used to determine the presence of Black Lung, and to establish disability, have resulted in wholesale controversions by the coal and insurance industries. In many cases these controversions are unavoidable on the part of the coal operator, as the time frame within which he must decide whether or not to pay the claim is so short as to preclude any action but that of filing a controversion. Perhaps, had the federal claims been adjudicated steadily over the seven-year-period since 1973, the operators would have been able to steadily review each of their claims as they came in and would have been able to produce a steady stream of decisions to accept or controvert a claim. Instead, the claims were literally dumped upon the coal industry with no prior notice in a 24-month-period from the spring of 1979 to the spring of 1981, usually with few of the applicable 30 days available for decision making. All in all, the U.S. coal industry is struggling to deal with more than 30,000 aggregate claims with several individual operators having 1,000 to 2,000 claims or more each.

The result has been that both the operators and the Administrative Law Judge/Benefits Review Board system has been overloaded. Therefore, I recommend that any and all actions which can be taken to facilitate the passage of this lump of claims through the bottleneck should be taken. As I understand it, these could include the following:

Increase the time frames within which responsible operators must respond to the various legal decisions and steps concerning a claim. (This would allow operators, hopefully, the necessary time to review all relevant and available evidence and make final decisions on whether to pay or contest substantial numbers of claims; with a hoped-for result of fewer controversions.)

Increase the use of informal conferences so as to reduce the number of claims which go all the way to an Administrative Law Judge hearing. One way to encourage the use of such conference by both sides is to give priority scheduling for Administrative Law Judge hearings to claims on which an informal conference was held.

Prohibit the use of evidence before an Administrative Law Judge which was available and withheld from submission during the claim process prior to hearing.

Give all possible training and support to Administrative Law Judges. One item frequently mentioned is the lack of a case reference system, so that the Administrative Law Judges can efficiently keep up with Administrative Law Judge and Benefits Review Board Black Lung case decisions. A frequent updating of the present Black Lung desk book would, perhaps, serve this purpose.

Perform more processing of case files in the DOL prehearing and review section so that cases affected by developing case law can be sent back to Deputy Commissioners for additional actions when indicated, rather than waiting years for a hearing, only to be remanded by an Administrative Law Judge.

Bring the number of judges on the Benefits Review Board up to full strength as soon as possible, and possibly increase the number to 5 so as to reduce the present backlog of several years.

Provide adequate overall budget support for all government agencies—Benefits Review Board, Administrative Law Judges, and DOL so that the sheer lack of staff does not cause further delays in the process and so that the present substantial delays can be reduced.

Question (3)

The Department of Labor can ensure that the state offset question is not an ongoing problem by:

(1) Not putting a responsible operator claim into interim pay status unless and until a positive check has been made with the appropriate state agency and the responsible operator as to the existence of a state claim.

(2) Performing (1) above for all responsible operator claims presently in interim pay status.

I cannot estimate the magnitude of the historical problem with state offsets since no data exists as to DOL's actual success or lack of it concerning identifying the offsets. About all that can be said is that there should be almost no offsets among the pre-1970 DOLCME Trust Fund claims and a high percentage of offsets among the post-1970 DOLCME responsible operator claims. The percentage of claims with state offsets should be 25%-35% of the post-1970 responsible operator claims on a nationwide basis.

Question (4)

With respect to the DOL data for use in the Trust Fund solvency models, I recommend that innediate steps be taken to:

(1) Reconcil the Department of Labor Black Lung Information System (BLIS) computer data base with the actual claim records, especially the post-1970 responsible operator claim records and thereby correct the current coding deficiencies in BLIS, which minimize its usefulness.

(2) Link the BLIS and payment computer systems so that they both concurrently show the same status for each claim at the same time. (Because they are not currently linked, data from each is often contradictory and payments may be made notwithstanding information in BLIS that indicates the payment is incorrect or the payment amount is incorrect.)

(3) Automate the present manual accounts receivable system which is, or soon will be, overloaded by claims for which overpayments and other collections occur. This system will become a vital mechanism in the process of recovering monies from the claimants receiving interim payments in responsible operator claims as the claims are adjudicated over the next several years.

In closing, I would like to suggest that all efforts be made to avoid repeating the past problems of not supplying sufficient budget and manpower to the administration of the Black Lung program. Virtually all of the delays in processing, notification and adjudication of Black Lung claims can be traced back to failures to provide sufficient resources to handle the claims. The magnitude of the problem is now apparent. The coal industry is committed to paying for the administration, at this point, of the federal Black Lung program via the federal Black Lung Trust Fund—any budgetary actions which may result in impeding the processing of the claims can only, at this point, further aggravate the Trust Fund deficit. Swift and correct processing of the claims is now one of the surest methods to reduce that deficit, and to prevent any future "surprises" with the regard to the federal Black Lung program.

Thank you.

Very truly yours,

ROBERT K. BRISCOE, *Vice President.*

Mr. **RANGEL.** Thank you and your firm for the contribution you have made.

We will continue these hearings in early fall, but the subcommittee will now stand adjourned, subject to the call of the Chair.

[Whereupon, at 12:08 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

ALTERNATIVE SOLUTIONS TO THE INSOLVENCY OF THE BLACK LUNG DISABILITY TRUST FUND

MONDAY, SEPTEMBER 28, 1981

House of Representatives,
Committee on Ways and Means,
Subcommittee on Oversight,
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Charles B. Rangel (chairman of the subcommittee) presiding.

Chairman Rangel. The Oversight Subcommittee will come to order.

We have Congressman Duncan, Mr. Duncan from Tennessee, with us this morning. This is a very serious problem in the industry, and the Congress has expected this Oversight Subcommittee to move forward with hearings to see whether we can bring about some solution to the insolvency of the trust fund.

I had hoped this morning that the Secretary of Labor would be here. I have been informed that neither he nor anyone else in the administration will appear in these proceedings because Mr. Stockman has reviewed some of the progress that has been made in this area, and it appears that the black lung problems are going to be considered with the problems that they are facing with all other entitlement programs.

Back in February, the President clearly said he intended to restore the solvency of the Black Lung Disability Trust Fund and to insure that the program is financed by a reasonable levy on the coal industry.

In a letter to me September 9, Secretary Donovan assured me of his commitment to restore solvency of the trust fund by increasing the existing excise tax and his readiness to testify in support of that commitment before the subcommittee.

It is abundantly clear that some political decisions have been made in the White House, and that the black lung program will be lumped together with other entitlement programs for reexamination, for further cutting back.

Thus I assume a different priority will be placed on this program, rather than the prior commitment. I don't want to belabor the history of my efforts to initiate responsible discussion with the administration, but these efforts do indicate my deep concern.

In July, the Department of Labor declined to testify at our hearing because they were having a comprehensive review of the black lung program. In September they asked for postponement because they had to correct a computer-based error, and the hearing was postponed until September 28.

Now we find out that changes have been made, and we don't really know where the hard work that has been put together by all of the factors in this serious dispute will lead.

The solvency of the trust fund is too important to be converted into a political football. I don't know what we can accomplish today without knowing what the administration is prepared to do.

The Department of Labor had worked out agreements, and we thought that we could discuss their testimony with the United Mine Workers, the coal associations, and the insurance companies.

Out of courtesy to you, we will continue the hearings, even though a very, very important component of the agreement will not be here. Agreements that have been worked out, of course, are now put on a political agenda.

It is my considered opinion that we are able, through our committee efforts, to raise the funds necessary to make the trust fund solvent and that we indeed would be improving our general revenue situation by cutting back substantial losses.

I don't know whether the administration intends to cut benefits, but it is clear that we had hoped that we could increase the tax revenue and move on so that the full committee could act on this.

[The chairman's opening statement follows:]

OPENING STATEMENT OF CHAIRMAN CHARLES B. RANGEL

This morning the Oversight Subcommittee resumes its hearings on the financial status of the Black Lung Trust Fund. We had expected that a representative of the Labor Department would be the lead off witness and that he would outline for us the Administration's recommendations for dealing with the problem of the Fund's insolvency. At least, that is what I was led to expect by the Secretary himself when, at his request, I deferred this hearing until today so that he could use the additional time to more adequately prepare his testimony.

But now I am informed by the Secretary that neither he nor anyone else from the Administration will appear at these proceedings. It seems that Mr. Stockman has been too preoccupied with other matters to approve for public dissemination a proposal that Secretary Donovan assured me was the Administration's proposal. Apparently, there is still some confusion about who, at any given moment, speaks for this Administration.

As I recall, back in February the President had clearly stated that he intended to restore the Fund's solvency and to "ensure that the program is financed by a reasonable levy on the coal industry." And, in his letter of September 9 to me, Secretary Donovan solemly assured me of the Administration's continued commitment to restore the Fund's solvency by an increase in the existing excise tax and its readiness to testify in support of that commitment before this Subcommittee. Obviously, however, Mr. Stockman thought otherwise. And now, I understand, the proposal will be shelved and the Black Lung program will be lumped together with the other entitlement programs for reexamination as prime candidates for further budget cuts.

I have no wish to belabor the history of my efforts to initiate responsible discussions with the Administation on this issue. I do, however, want to state for the record that I have repeatedly sought to provide opportunities for the Secretary of Labor to present and discuss the Administation's proposal with the Congress—and I have been consistently misled about the status of that propsal. Although the Administration allegedly shares my "deep concern" about the status of the Fund—as the Secretary put it in one of his letters to me—he has now declined on three separate occasions to testify before this Subcommittee.

In July, he declined to testify at our first hearing, pleading a need to complete a comprehensive review of the program. On September 9, he again declined my invitation to testify at the time originally scheduled for this hearing. Once again he requested a postponement so that the Department could review its projections and refine its recommendations. Such a delay was necessary, according to the Secretary, because the Department had found a "computer-based computation error" in its projections of the Fund's insolvency and that after correcting for this error it appeared that the revenue requirements for achieving solvency might be considerably higher then had been previously assumed. Considering the importance of this development, I postponed the hearing until September 28. But I did so with the understanding that the Department would testify, and would provide both an accounting of its revised projections and a detailed discussion of the Administration's proposal. Now I am informed, at the last possible moment,—and without even the pretense of a request for a postponement—that this commitment will not be honored. Apparently, Mr. Stockman has not only managed to leave the Agriculture Department with ketchup on its face; he's also succeeded in throwing coal dust in the Labor Department's eyes.

The solvency of the Black Lung Trust Fund is too important an issue to be converted into a political football—or to be folded into one of Stockman's package deals. And I have no desire to make partisan political capital out of what is clearly an irresponsible and, for Secretary Donovan, an embarassing Administration withdrawal from a long-standing commitment. But this repeated refusal to appear puts a new light on the Presiden't claim that he wants a dialogue with the Congress. It throws into bold relief the fact that any program—no matter how critical to the security and well-being of working people, or how susceptible it is to solution on its own merits—is just so much grist for Stockman's pulverising budget mill. And it represents, I regret to say, further evidence of the Administration's contempt for an orderly legislative process.

We will, therefore, proceed with this hearing. The witnesses appearing today all have relevant points to make about this issue; and it is the responsibility of this Subcommittee to receive such testimony and to compile a comprehensive record for the consideration of the full Committee on Ways and Means. I believe as I am sure most people do, that the growing deficit in the Fund requires prompt legislative action to remedy the situation. It is the purpose of this hearing to help determine precisely what form that action should take.

Chairman **Rangel**. Mr. Duncan, perhaps, has a clearer insight as to where the administration intends to go.

Mr. **Duncan**. Thank you, Mr. Chairman. I have not discussed this subject at all with the administration. I have always supported the black lung benefit program, and I do thank you for holding the hearings because it is something we can't just bury our head in the sand and say problems don't exist and that we have plenty of money.

But I think we will get from these hearings, perhaps, a truer picture of where we are and where we are going. I commend you on calling the hearings.

Chairman **Rangel**. Thank you. I have the Under Secretary's letter and I would like to read it and make it a part of the record. It is directed to the Chair:

This is to advise you that new developments outlined in the President's speech of September 24 make testimony by the Department before your subcommittee inappropriate at this time.

You undoubtedly are aware of the President's proposal to establish an Administration task force to formulate a legislative package on Federal entitlement programs.

The task force will begin this week to review a number of programs, including the black lung program, which is the subject of your hearings today. Agencies represented on the task force include the Office of Management and Budget, the Department of Health and Human Resources and Human Services, the Department of Labor, the Department of Energy and others that may be affected.

Please be assured that the Administration continues to be committed to the adoption of a proposal which will significantly strengthen the benefit provisions and, at the same time, increase the coal tax as a means of making the program fiscally sound and retiring the black lung trust fund debt to the Treasury.

We believe this is the responsible approach, and we look forward to working with the subcommittee toward that end after the Administration completes its review of the entire Federal entitlement program.

Respectfully, Robert B. Collyer.

I will suggest to the chairman of the full committee that perhaps the committee should move forward because it is abundantly clear that we don't know when the administration or if the administration is prepared to cooperate with the efforts of this committee.

I ask that this correspondence be made a part of the record.

[The letters follow:]

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, D.C., June 11, 1981.

Hon. RAYMOND J. DONOVAN,
Secretary of Labor,
Washington, D.C.

DEAR MR. SECRETARY: The Ways and Means Subcommittee on Oversight has tentatively scheduled a hearing in late July, 1981 on the Current insolvency of the Black Lung Disability Trust Fund. The Subcommittee will undertake a comprehensive review of the causes of the problem and will consider proposals on enhancing revenues and generating savings. We are aware of the President's interest in this issue as stated in his Program for Economic Recovery.

I understand that your Department and the Office of Management and Budget will have completed the Administration's proposal on the Trust Fund by mid-July. Since tax legislation originates in the Committee on Ways and Means, I believe it would be timely and appropriate for the Administration to reveal its proposal at the hearing. I have also requested organized labor and the mine operators to submit their proposals at that time.

In addition to the completed proposal, the Subcommittee would appreciate testimony that addresses the following items:

(a) In what year would the Trust Fund become financially solvent under your proposal?

(b) The approved claims for miners which have ceased employment before 1970 are paid out of the Trust Fund. How does the Department verify that miners who file black lung claims have actually ceased coal employment before 1970 and have not engaged in such employment since?

(c) Awards controverted by a "responsible operator" are paid on an interim basis through the Trust Fund until final adjudication. What can be done to reduce the current high rate of claim controversion? How aggressively does the Department seek to recover the interim payments from a claimant if a controversion is sustained?

(d) To what extent do the current law and regulations ensure that adequate medical evidence is collected for the Department to make a determination of total disability or death from pneumoconiosis?

(e) How sensitive is the level of coal mine employment to increases in the coal tax?

(f) By law, the Department must reduce the Federal award by the amount of the state workers' compensation award. Has the Department promptly performed all required offsets?

(g) What is the extent of the backlog of information on claimants and beneficiaries to be entered into the automated Black Lung Information System? How does the Department routinely gather and enter updated information on claimants and beneficiaries?

(h) How adequate is the current coal dust standard and compliance to it? What measures are the Department taking to ensure high compliance rates in the future?

(i) Has the Department ever conducted any studies on other sources of compensation and income which beneficiaries receive?

(j) What are the prospects for speeding up the disposition of cases presently awaiting decision by the ALJs?

(k) Should the Trust Fund assume financial responsibility for those beneficiaries whose claims were approved because of the 1977 Amendments and whose benefits are presently payable by responsible operators? Can the Trust Fund afford these additional claims?

Information on these items will be essential in the Subcommittee's deliberations on the Administration's proposal.

You will be notified of the specific date, time, and place of the hearing as soon as they are confirmed. If you have any questions, please contact Mark Wincek or Leon

Fraser of the Subcommittee staff at 225-5522. I look forward to your proposal and testimony.

Sincerely yours,

CHARLES B. RANGEL, *Chairman.*

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, D.C., July 15, 1981.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of June 11 inviting the Department to testify on the Black Lung Disability Trust Fund.

As you know, the Administration is dissatisfied with the present law and feels that remedial legislation is needed. Consequently, the Department has been reviewing the entire area of coal mine workers' compensation in an attempt to produce a comprehensive bill. This review is ongoing and the Administration is not yet prepared to offer a proposal.

The Department agrees with the Subcommittee that a comprehensive review of the present legislation is needed. However, due to the course of the budget process and the impending House-Senate Conference, we do not feel that our appearance at the suggested date would be timely.

For these reasons the Department respectfully requests the opportunity to testify at a later date.

Sincerely,

RAYMOND J. DONOVAN.

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, D.C., August 20, 1981.

Hon. RAYMOND J. DONOVAN,
Secretary of Labor, U.S. Department of Labor,
Washington, D.C.

DEAR MR. SECRETARY: The Ways and Means Subcommittee on Oversight has scheduled hearings on September 17 and 18, 1981 on the current insolvency of the Black Lung disability Trust Fund. As you may know, the Subcommittee conducted hearings on July 27 on the causes of the insolvency problems. The upcoming hearings will focus on alternative solutions to bring the Trust Fund into solvency.

In this respect, I think the Department of Labor can play a unique and crucial role. As you know, because of high interest changes and other factors, the substantial deficit in the Trust Fund is swelling at a rapid rate. I think the only responsible course for the Congress and the Administration is to seek a reasonable solution to the difficulties of the Black Lung program as rapidly as possible. On a subject as emotionally charged as Black Lung, it is particularly important for the Executive Branch to lead the way to a moderate solution, and to find and forge compromises between opposing factions. In the absence of a responsible, concerted effort by the Administration at this point, I am afraid that the problems in the Black Lung program may go unsolved for several years or more.

Thus, the Subcommittee invites you to testify at the hearing on Thursday, Septermber 17, which commences at 9:00 a.m. in Room B-318 of the Rayburn House Office Building. We are certainly hopeful that you will take this opportunity to lay out an Administration proposal that will not only enhance revenues and generate savings for the Trust Fund, but will also be the kind of compromise that can bring a speedy resolution to this complex matter. Also, as we previously requested in our letter of June 11, the Subcommittee would appreciate testimony that addresses the following particular items:

(a) In what year would the Trust fund become financially solvent under your proposal?

(b) The approved claims for miners which have ceased employment before 1970 are paid out of the Trust Fund. How does the Department verify that miners who file black lung claims have actually ceased coal employment before 1970 and have not engaged in such employment since?

(c) Awards controverted by a "responsible operator" are paid on an interim basis through the Trust Fund until final adjudication. What can be done to reduce the current high rate of claim controversion? How aggressively does the Department seek to recover the interim payments from a claimant if a controversion is sustained?

(d) To what extent do the currnet law and regulations ensure that adequate medical evidence is collected for the Department to make a determination of total disability or death from pneumoconiosis?

(e) How sensitive is the level of coal mine employment to increases in the coal tax?

(f) By law, the Department must reduce the federal award by the amount of the state workers' compensation award. Has the Department promptly performed all required offsets?

(g) What is the extent of the backlog of information on claimants and beneficiaries to be entered into the automated Black Lung Information System? How does the Department routinely gather and enter updated information on claimants and beneficiaries?

(h) How adequate is the current coal dust standard and compliance to it? What measures is the Department taking to ensure high compliance rates in the future?

(i) Has the Department ever conducted any studies on other sources of compensation and income which beneficiaries receive?

(j) What are the prospects for speeding up the disposition of cases presently awaiting decision by the ALJs?

(k) Should the Trust Fund assume financial responsibility for those beneficiaries whose claims were approved because of the 1977 Amendments and whose benefits are presently payable by responsible operators? Can the Trust Fund afford these additional claims?

I anticipate that Members of the Subcommittee will have many questions about the effect of responsible operators' controversion of claims on the Trust Fund's solvency and about the impact of particular recommendations to bring Trust Fund solvency. Therefore, it would be helpful to the Subcommittee if your chief witness coud be accompanied by Nahum Litt, Chief Administrative Law Judge, and Ralph Hartman, Director of Workers' Compensation Programs. Also, we request that you submit 100 copies of your written testimony to the Ways and Means Committee Office, 1102 Longworth House Office Building, Washington, D.C. 20515, at least 24 hours in advance of your appearance.

If you have any questions, please call the Subcommittee staff at 225-5522. I look forward to your testimony.

Sincerely yours,

CHARLES B. RANGEL, *Chairman.*

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, D.C., September 9, 1981.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In reply to your letter of August 20, let me first state that this Administration shares your deep concern about the Treasury deficit which is being caused by the Black Lung program. We are committed to achieving both statutory and administrative solutions to bring solvency to the Trust Fund. This would enable repayment of the estimated $1½ billion liability which will have accrued by September 30 because revenues from the special coal tax are not sufficient to pay benefits under the 1977 amendments to the law.

As you know, the Administration has been working on a reform proposal that would restore solvency by restricting benefit entitlements to persons who are truly disabled by black lung and ensure that the program is financed by a higher levy on the coal industry, rather than from general revenues. The objective is to eliminate questionable claims and entitlements while also tightening administrative procedures so as to reduce outlays to a level where benefits can be financed with an increased but reasonable coal tax.

To properly identify the fiscal effect of various policy options and provide projections on Trust Fund solvency, the Department has created a computer model. The elements of that model have been refined several times in order to provide more accurate information. Just recently, we have been able to institute a more accurate method for determining the cost of borrowing by the Fund, and we have included in the model more recent projections of coal production. We have also corrected a computer-based computation error. These changes will result in new solvency projections which, although still tentative, point to considerably higher revenue requirements for obtaining solvency than had been previously shown.

The model is now receiving further examination so that its forecasts will be as accurate as possible, based upon current data. We do not anticipate that the Department's examination will be completed until mid-September at the earliest. Because the Administration, the Subcommittee, and all other interested parties are so reliant on the accuracy of the projections made employing the model, we believe a rescheduling of the September 17-18 hearings is necessary. Holding the hearings during the first week in October should provide us with adequate time for preparation.

Therefore, while accepting your invitation to have the Department provide witnesses at your upcoming hearings, I respectfully request that the hearings be deferred for at least two weeks. I do so in the knowledge that you share this Administration's desire to achieve rapid, but also reasaonable and proper solutions to the difficulties of the Black Lung program.

Sincerely,

RAYMOND J. DONOVAN.

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, D.C., September 10, 1981.

Hon. RAYMOND J. DONOVAN,
Secretary, Department of Labor,
Washington, D.C.

DEAR SECRETARY DONOVAN: In response to your request, I have postponed the hearings on the solvency problems of the Black Lung Disability Trust Fund to Monday, September 28, 1981. The hearing will begin at 9:00 a.m. in Room 1100 of the Longworth House Office Building, and I shall look forward to hearing the testimony of witnesses from your Department at that time.

I certainly share your concern over the substantial drain on the Treasury caused by the insolvency of the Fund. While I fully appreciate your desire to correct your computer model in order to provide the most accurate testimony possible, I am very anxious to take action on this matter as soon as possible, especially since your preliminary revised model projections indicate that the Fund is generating an even greater deficit than we originally thought.

In your letter of September 9, 1981, you outlined the general position of the Department that in order to correct the insolvency of the Fund an increase in the existing excise tax will be necessary, in addition to administrative improvements and some prospective changes in the entitlement portion of the program. I expect to receive a more detailed analysis and description in your recommendations at the hearings and trust you will use this additional time to make your proposal as specific as possible.

Pursuant to our original request, we would appreciate having a copy of your testimony in advance of the actual hearing date so that we can give it proper consideration. I look forward to working with you to reach an appropriate solution to the insolvency problems of the Black Lung Disability Trust Fund.

Sincerely yours,

CHARLES B. RANGEL, *Chairman.*

U.S. DEPARTMENT OF LABOR,
DEPUTY UNDER SECRETARY FOR EMPLOYMENT STANDARDS,
Washington, D.C., September 28, 1981.

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight, House Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is to advise you that new developments outlined in the President's speech of September 24th make testimony by the Department before your Subcommittee inappropriate at this time.

You undoubtedly are aware of the President's proposal to establish an Administration task force to formulate a legislative package on federal entitlement programs. The task force will begin this week to review a number of programs, including the Black Lung program which is the subject of your hearings today. Agencies represented on the task force include the Office of Management and Budget, the Department of Health and Human Services, the Department of Labor, the Department of Energy, and others that may be affected.

Please be assured that the Administration continues to be committed to the adoption of a proposal which would significantly strengthen the benefit provisions and, at the same time, increase the coal tax as a means of making the program fiscally sound and retiring the Black Lung Trust Fund debt to the Treasury.

We believe this is the responsible approach, and we look forward to working with the Subcommittee toward that end after the Administration completes its review of the entire federal entitlement problem.

Respectfully yours,

Robert B. Collyer,
Deputy Under Secretary.

Chairman Rangel. We will proceed with our schedule, acknowledging that the Department of Labor will not be here. And I ask Sam Church, Jr., the president of the United Mine Workers of America to come forward. He will be accompanied by Dr. Lorin Kerr, director of Occupational Health.

STATEMENT OF SAM CHURCH, JR., PRESIDENT, UNITED MINE WORKERS OF AMERICA, ACCOMPANIED BY LORIN KERR, DIRECTOR OF OCCUPATIONAL HEALTH, AND MICHAEL BUCKNER, RESEARCH MANAGER

Mr. Church. Thank you, Mr. Chairman.

Chairman Rangel. Mr. Church will also be representing District 30 of the United Mine Workers of America of Kentucky.

Mr. Church, your full statement, naturally, will appear in the record. In view of the change of circumstances in the witness list, the committee would understand if you feel that you have to change your testimony as opposed to what was written.

But your full statement will be entered into the record.

Mr. Church. Thank you, Congressman Rangel.

It is my pleasure to appear before this committee and you, Mr. Chairman, who labor recognizes as a friend. I would like to also introduce our research director, Mr. Mike Buckner, who will be assisting us today.

It certainly appears from the absence of the Department of Labor here today and from the speech that we heard Thursday evening that this program very well may be a target of the meat ax budget cuts.

With that, I will read into the record my written statement, Mr. Chairman, if that is all right with you at this time.

Chairman Rangel. Certainly.

Mr. Church. Mr. Chairman, members of the subcommittee, on behalf of the United Mine Workers of America and all the Nation's black lung victims, I welcome the opportunity to discuss with you the financial condition of the Black Lung Disability Trust Fund. As you know, this issue has received considerable attention in recent months. In anticipation of these hearings, we commissioned an analysis of the trust fund and the factors that led to its current insolvency. Although my statement today touches many of the points made in that analysis, I would request that the full text of the report, "An Analysis of the Condition of the Black Lung Disability Trust Fund," be included in the hearing record.

Am I safe to assume that you have already been given this report?

Chairman Rangel. So ordered. We have copies of it.

[The analysis follows:]

An Analysis of the Condition of the Black Lung Disability Trust Fund

United Mine Workers of America

Acknowledgements

This paper was prepared by:

Deborah H. Merrick, Preston, Thorgrimson, Ellis & Holman
Robert E. Vagley, Preston, Thorgrimson, Ellis & Holman

COMPAC Department, United Mine Workers of America
Maier B. Fox, Contract Supervisor

We gratefully acknowledge the assistance of the following individuals in obtaining the data found herein:

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Table of Contents

Page

Introduction 5

Legislative History 7

Status of the Trust Fund 9
1. Retroactive Changes & Re-reviewed Claims 9
2. Retroactive Benefits 11
3. Payment Status of Claims 12
4. Approval Rates 13
5. Controversions by Responsible Operators 14
6. Interest on Advances from the General Fund 18
7. Payment Reduction Requirements 19
8. Trust Fund Receipts 20

Summary 23

Tables (follow) 23

INTRODUCTION

Black lung is the term used to describe the irreversible and often debilitating and lethal lung diseases afflicting coal miners unnecessarily exposed to hazardous dusts at the work site. Congress legalized the term "black lung" as a synonym for coal workers' pneumoconiosis (CWP) in Title IV of the Federal Coal Mine Health and Safety Act of 1969, entitled "Black Lung Benefits." The diagnosis of CWP primarily required a chest x-ray revealing characteristic dust opacities. While several thousand widows of men whose death could be attributed to CWP and totally disabled miners with characteristic lung x-rays began to receive benefits, there were thousands more equally disabled who were denied payment because they had no lung x-ray evidence of CWP.

The 1969 coal mine Act was amended in 1972 to provide those miners with coverage also. The Black Lung Benefits Act of 1972 specified, among other things, that no application shall be denied solely on the basis of a negative x-ray. This meant that the term "black lung" is generic and in addition to coal workers' pneumoconiosis includes dust induced bronchitis and emphysema. Under the 1969 and 1972 Acts the benefits awarded victims of black lung were paid from funds in the United States Treasury. To many observers of the program this was improper. They believed that, since black lung was an occupational disease, the cost of the benefits awarded should be borne by the coal mining industry. The result of this belief was a new financing system.

The Black Lung Disability Trust Fund was created in 1978 pursuant to the Black Lung Benefits Revenue Act (the "Revenue Act," Pub.L. No. 95-227, 92 Stat. 11 (1978)). The Revenue Act was designed to place primary financial responsibility for the black lung benefits program on the coal mining industry rather than the federal taxpayer. The financing system was to be self-sustaining—mine operators were required to pay benefits to black lung victims for whom they were legally responsible and a trust fund, financed through a tax on coal production, was established to pay benefits to other approved claimants. The trust fund was established on the United States Treasury books in 1978 pursuant to Section 3(a) of the Revenue Act (30 U.S.C. §934a (1978)). Its trustees are the Secretaries of Treasury, Labor and Health and Human Services.

Companion legislation to the Revenue Act, the Black Lung Benefits Reform Act (the "Reform Act," Pub.L. No. 95-239, 92 Stat. 95 (1978)), amended the evidentiary and eligibility requirements in existing law to modify provisions that had prevented a large number of deserving claimants from receiving benefits. The Reform Act also required that claims pending or denied under old law be reviewed under the new criteria. These two interrelated statutes made a significant difference in the operation of the black lung benefits program. Most of the changes that ensued in the direction and scope of the program were anticipated and desired by the Congress. However, the financial operation of the Black Lung Disability Trust Fund has not comported fully with expectations.

LEGISLATIVE HISTORY

Congress realized that the trust fund would not be self-sustaining at first. The provision authorizing advances from the general fund of the Treasury reflects the realization that the coal tax receipts would be insufficient to meet the fund's obligations during the first several years of its existence. Both Senator Russell Long (Chairman, Finance Committee) and Representative Al Ullman (Chairman, Ways and Means Committee) made this point during debate.[1] The sponsors of the 1977 amendments (which became the Revenue Act and the Reform Act) also acknowledged that the coal tax might not produce sufficient revenues to meet the obligations of the trust fund. If receipts were to prove inadequate, Congress expected to adjust the tax rate.

The provisions of the Revenue Act and the Reform Act virtually assured the inadequacy of coal tax receipts to meet trust fund payments. The tax receipts are tied to a flat tax rate per ton of coal produced, while the black lung benefits are tied to a sliding payments scale. Thus, black lung benefit levels have increased periodically, while the tax rate has remained constant. (See Tables 4 and 5 for past and projected benefit levels.)

When Congressman Carl Perkins presented the Conference Report on H.R. 4544 (the Black Lung Benefits Reform Act) to the House of Representatives, he made the following statement with respect to trust fund receipts and the anticipated costs of the legislation:

> "Mr. Speaker . . .
>
> I must mention the allocation of the cost of the legislation out of respect for the concern of the administration and of some Members, that we may not have adequately provided for full coal industry liability. In the unlikely event we have somehow failed to do so, let me say that I would be the first Member to sponsor legislation to increase the contributions to the Black Lung Disability Trust Fund. It should also be noted that all of the principal architects of that trust fund were unanimous in agreeing that the fund should be fully adequate to meet the demands made upon it; and that should any shortfall occur, it would be legislatively remedied in quick order.[2]

In fact, the tax formula was based on a compromise agreement that emerged from a lengthy House/Senate conference in 1977. The conferees met for several months on House and Senate bills that encompassed the provisions for financing the black lung program and for amending the substantive black lung benefits law. When agreement was reached on the funding mechanism, a separate bill was drafted (H.R. 5322). That bill, the Black Lung Benefits Revenue Act, passed the Senate on December 15, 1977, and the House of Representatives on January 24, 1978.[3] Meanwhile, the conference committee continued to work on changes to the evidentiary and eligibility requirements in existing law. The final product of the conference committee, the Black Lung Benefits Reform Act, was enacted in February 1978.

In accordance with standard legislative procedure for conference committee agreements, the final trust fund compromise was adopted without a revised cost or revenue analysis. The more unusual procedure of producing two bills from one conference committee (the Revenue Act and the Reform Act) was necessary for compliance with the constitutional requirement that a revenue raising measure must arise in the House of Representatives. The House-passed bill (H.R. 4544) did not contain a "tax" mechanism as did the Senate amendment.

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[1] HOUSE COMMITTEE ON EDUCATION AND LABOR, 96TH CONG., 1ST. SESS., BLACK LUNG BENEFITS REFORM ACT AND BLACK LUNG BENEFITS REVENUE ACT OF 1977, 1110, 1138 (Comm. Print 1979). (Hereinafter referred to as Legislative History compilation.)

[2] *Id.*, 917

[3] Congress considered several different funding mechanisms for the black lung program in the years leading up to the 1977 amendments.

The legislative origin of the trust fund was in H.R. 10760, which passed the House in the 94th Congress (1975). That bill called for creation of an insurance trust fund with coal operators serving as trustees. In 1976, the Senate amended H.R. 10760 and substituted a taxing mechanism, but failed to act on the legislation prior to adjournment. In the 95th Congress the House again passed legislation (H.R. 4544) establishing the Black Lung Disability Insurance Trust Fund. It consisted of assessments and premiums paid by all coal operators. The initial premium rate was to be established by the Secretary of Labor at a rate per ton of coal. The rate was to be adjustable to "reflect the experience and expenses of the Fund" and "to ensure that all obligations of the Fund will be met." (*Id.*, 531).

Shortly after H.R. 4544 was reported by the House Education and Labor Committee, the Senate Human Resources Committee held hearings on the black lung benefits program. In May 1977, the committee agreed to report an original bill, S. 1538, which was subsequently referred to the Finance Committee. As reported by the Human Resources Committee, S. 1538 would have imposed an excise tax on the producer's sale of coal, at a rate determined by the coal's Btu value. The Finance Committee modified the tax and trust fund provisions, converting the tax into a tax on coal (other than lignite) at the rate of one percent of the sales price, and terminating the tax and trust fund after 5 years. In July, the Senate adopted the tax title as reported by the Finance Committee, but struck the time limitation on the tax. (*Id.*, 1061). In September, after the House of Representatives had passed H.R. 4544, the Senate amended it by substituting the text of S. 1538.

The House and Senate appointed conferees from the tax and labor committees to resolve the differences. After the conference committee reached agreement on the revenue raising provisions, the agreement was passed as a separate bill (H.R. 5322). H.R. 5322 imposed the existing excise tax on the sale of coal and established a trust fund to receive the revenues and to make certain benefit payments and other outlays.

CURRENT STATUS OF THE TRUST FUND

The magnitude of the current trust fund deficit is a cause of concern for everyone involved in the black lung program. However, the deficit cannot simply be ascribed to inadequate receipts or excessive outlays. Less obvious factors have aggravated the fiscal condition of the trust fund. This document analyzes the factors affecting the trust fund to provide a better understanding of the fund's condition and to establish an appropriate background for future policy decisions.

The present trust fund deficit was caused by the interaction of the eight outlay factors discussed in the following pages. The most important point derived from analysis of these factors is the impossibility of relying on unique past circumstances to predict the future. In fact, the greatest demands on the trust fund already have occurred. With one exception—the growing interest component of the fund's deficit—changing circumstances already have lessened the incremental demands on the fund and inevitably will decrease the total demands on the fund. Essentially, the "worst is over" for the trust fund.

1. *Retroactive Changes and Re-reviewed Claims*

Extraordinary demands were placed on the trust fund in terms of the number and nature of benefit claims assigned to it in the first three years of its existence.[4] However, a large proportion of these demands were short term or one-time only.

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[4] Throughout the discussion and the accompanying presentations of data, references will be made to the following types or classes of claims that are included within the black lung benefits program.

Claims terminology before 1978:

Part B Claims—The law creating the original Black Lung Benefits Program in 1969 was contained in Title IV of the Coal Mine Health and Safety Act (Pub.L. No. 91-173, 835 Stat. 742 (1969)). Part A of Title IV contained general provisions. Under Part B, the Social Security Administration (SSA) was authorized to pay benefits from federal funds to miners totally disabled by black lung. This federally financed program was to run until December 31, 1972, and was extended in the 1972 Black Lung amendments to December 31, 1973.

Part C Claims—Under the Act as amended in 1972 (30 U.S.C. §901 (1972)), claims filed subsequent to December 31, 1973 ("Part C" claims) were to be filed under an applicable State workers' compensation law, if such law was determined by the Secretary of Labor to provide adequate benefits for total disability or death due to pneumoconiosis. If no such law was approved, the claim could be filed with the Secretary of Labor. The Secretary was authorized to process, adjudicate, and, if appropriate, identify a coal mine employer responsible for the payment of benefits to the claimant. If no coal operator could be identified, the Secretary was authorized to pay benefits from federal funds.

Claims terminology after 1978:

New Part C Claims—Claims filed with the Department of Labor (DOL) after March 1, 1978 (the effective date of the Reform Act).

Old Part C Claims (435 Part C Claims)—Claims filed with DOL before the enactment of the Reform Act that either were pending or denied and that were reviewed again under the provisions of Section 435 of the Reform Act.

They were the result of the retroactive changes made in the black lung program by the Black Lung Benefits Reform Act of 1977.[5]

That law directed a re-review of all pending or denied claims by the Social Security Administration (SSA) and/or the Department of Labor (DOL). This provision created a huge initial workload. DOL and SSA received 223,568 claims for re-review. The vast majority of these cases have been decided at the administrative level (98,661 approved and 112,973 denied), and most of those approved became the responsibility of the trust fund. The current backlog of less than 12,000 claims presumably soon will be eliminated and future claims will be processed on a current basis.[6] (See Table 2).

In contrast to the initial inventory of over 200,000 claims, the number of new claims filed each year since 1978 has averaged between 20,000 and 30,000. DOL projects a decrease to 15,000 new filings a year by 1984. Projections on future aggregate claim filings, the liability for those claims (trust fund or responsible operator) and approval rates indicate that the number of new claims assigned to the trust fund in the future will decline significantly. (See Table 3). These projections assume compliance with the Congressionally mandated levels of respirable dust.

SSA Part B Claims—Pending or denied claims originally filed with SSA that the claimant elected to have re-reviewed by SSA.

DOL Part B Claims—Pending or denied claims originally filed with SSA that the claimant elected to have re-reviewed by DOL or that were forwarded to DOL for further development after a denial by SSA.

Pre-1970 Claims (Trust Fund Claims)—The 1977 Reform Act assigned liability for payments on the basis of the last date of coal mine employment. If the last employment occurred prior to January 1, 1970, claims are assigned to the Black Lung Disability Trust Fund for payment.

Responsible Operator (RO) Claims (Post 1969 Claims)—These claims are paid by the responsible coal mine operator, or by the trust fund if a responsible operator cannot be identified.

[5] Under the 1977 amendments, the trust fund was assigned two one-time obligations and a third permanent responsibility which, although large, are relatively minor compared to the obligations discussed in the text. One obligation was for the repayment into the Treasury of an amount equal to that expended by the Secretary of Labor out of general revenues for claims paid before April 1, 1978. (Federal Mine Safety and Health Act of 1977, 30 U.S.C. §934 (1978)). The second was to reimburse coal mine operators for amounts they had paid before April 1, 1978 in satisfaction of claims of miners whose last employment in coal mines was terminated before January 1, 1970. (*Id.*)

These one-time only payments, which totalled about $90 million, helped to increase the initial demands on the trust fund; they account for almost 6% of the fund's outlays through September 30, 1980.

Another required Trust Fund expenditure is the payment of the administrative expenses of Labor, Health and Human Services and Treasury. This is an ongoing responsibility of the fund that has thus far accounted for about 5% of fund outlays.

The Department of Labor estimates that during fiscal years 1981–1986 approximately 108,000 new claims will be received, an average rate of 18,000 per year.[7] This annual rate amounts to only about 8% of the number of claims received for re-review in 1978. The total number of new Part C filings received and projected through 1986 will amount to less than the total number of re-reviewed claims.

It is apparent from these figures that the first years of the black lung program (1978–1981) are not typical of the long term. The corresponding impact of these atypical years on the trust fund is also apparent. Almost 100,000 claims have been approved as a result of the re-review process, while only 18,000 new claims have been approved—approximately a five to one ratio. Although DOL has not calculated the outlays required for the re-reviewed claims, applying the five to one ratio to the $1.5 billion expended by the fund for benefits and costs through the end of fiscal year 1980 produces a rough estimate of $1.25 billion in outlays attributable to the pending and denied claims awarded pursuant to the 1977 amendments. This figure is a quarter of a billion dollars more than the trust fund deficit on September 30, 1980. These figures demonstrate that the trust fund has had more than adequate resources to support the claims filed and approved annually since the 1977 amendments, but has had inadequate resources to absorb the massive infusion of 100,000 re-reviewed and approved claims in the 1978–1981 period—without which, obviously, the trust fund would be solvent today. Never again will the trust fund be required to absorb such an impact.

2. *Retroactive Benefits*

In addition to the large number of old claims that were re-reviewed and approved, the claims were unique in that they involved large initial payments of retroactive benefits. These large payments have been the major component of trust fund outlays.

Department of Labor regulations provide that all past due benefits be paid in the same month as the first benefit payment (20 C.F.R. §725.502(c) (1978)). In the case of a disabled miner whose claim is approved after re-review, benefits are payable beginning with the month of onset of the disability, the date the original claim was filed or the date re-review was elected. Under the law, retroactive benefits are awarded for a period that begins no earlier than January 1, 1974. (Reform Act §15, 30 U.S.C. §945 (1978)). Survivor's benefits date back to the month of the miner's death or to January 1, 1974, whichever is later.

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[6] Many of these clams may still be pending before Administrative Law Judges, the Benefits Review Board, or in the Courts of Appeals.

[7] Interview with Robert Dorsey, Acting Chief, Branch of Operations, Policies and Regulations, Coal Mine Workes' Compensation, Employment Standards Administration, DOL, April 23, 1981. (See Table).

Many of the pending and denied claims awarded after the 1977 amendments qualified for a maximum retroactive benefit payment. These payments usually amounted to several thousand dollars each. For example, a miner with 3 dependents whose claim was filed any time from January 1, 1970 to January 1, 1974, and approved on January 1, 1979, would have received approximately $24,000 in retroactive benefits with his first monthly payment.[8] These high retroactive payments contrast sharply with current and projected retroactive payments.

Some new claims filed under Part C may also qualify for lengthy periods of retroactive benefits. However, the payment of maximum retroactive benefits should be relatively infrequent in the future. In fact, the average lump sum retroactive payment is decreasing. In 1979, the average retroactive payment per claim (including new Part C claims) was $14,000.[9] Currently, the average lump sum payment is $10,500 and DOL estimates that by fiscal year 1982 it will decrease to $3,000. (See Table 3). This projected decrease is attributable to (1) faster claims processing by DOL and (2) the relative "newness" of the claims being filed.[10]

According to DOL estimates, about 48% of the benefits paid during the current fiscal year (FY 1981 to date—October 1980–April 1981) were retroactive benefits ($140 million out of a total of $290 million).[11] Although DOL does not have historical data available on retroactive benefit payments, one can assume that the percentages for 1978 through 1980 were higher.[12] A rough estimate would be that over 60% of the fund's outlays since 1978 have been for retroactive benefits. The impact on the fund of large retroactive payments represents a one-time aberration in the black lung program that will not be repeated.

3. *Payment Status of Claims: Trust Fund Liability Versus Responsible Operator Liability*

The mixture of claims approved under the black lung program is a third factor that has and will influence the condition of the trust fund. Thus far the claim mix has resulted in heavier demands on the trust fund than directly on the responsible coal operators.[13] However, this situation will change.

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[8] Benefit calculated from average monthly benefit schedule published by DOL. (See Table 5).

[9] Interview with Dorsey, April 23, 1981.

[10] *Id.*

[11] Telephone interview with Dorsey, April 27, 1981.

[12] Close to 100% of the payments made by the trust fund consisted of retroactive benefit payments at the beginning of the program. This occurred because of the preponderance of older or re-reviewed claims processed during that period (and because the number of beneficiaries on the monthly rolls was small).

[13] These demands have been exacerbated by the interim benefit payments required of the trust fund due to operator controversions.

Data for the claims processed since 1978 indicate that about 70% of the approved claims to date are pre-1970 employment claims. The proportion of claims assigned to the trust fund is greater with respect to the older claims than the new Part C claims. About 76% of the Old Part C, SSA Part B and DOL Part B claims awarded under the provisions of the Reform Act were pre-1970 or trust fund claims. In comparison, claims based upon employment prior to 1970 have made up only 66% of the new Part C approvals.

These percentages will continue to change because the claimant population will shift to one with more recent coal mine employment. DOL estimates that the trust fund share of incoming claims will continue to decline and that by 1986 the claims mixture will be reversed, that is, 60% of the claim awards will be RO claims. (See Table 3). By 1988, DOL has projected that 100% of the approved claims will be assigned to reponsible operators.[14]

4. *Approval Rates*

The percentage of black lung claims actually approved is a statistic with obvious implications for the trust fund. As indicated above, DOL anticipates a total of 108,000 new claim filings through fiscal year 1986, declining from 25,000 during fiscal year 1981 to 13,000 during fiscal year 1986. (These figures may be adjusted downward, as current filings indicate that only 20,000 claims will be received this year.[15]) The actual number of claims added to the trust fund rolls from these filings will be significantly less than those numbers might otherwise indicate, however, because the approval rates for new claims are decreasing and, under current DOL projections, will continue to decrease for the next five years. (See Table 3).

The approval rates for black lung claims considered by SSA and DOL were relatively high following the enactment of the 1977 amendments and thus added to the initial demands on the trust fund. However, these rates have declined steadily. The cumulative average of the approval rates for Old Part C claims was 59.2% at the end of calendar year 1979; this average had declined to 45.5% as of February 1981. Average new Part C approval rates decreased from 34.9% to 29.0% during the same time period, and Part B approvals declined from 35.0% to 28.1%.[16] Moreover, recent data indicate a trend toward significantly lower

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[14] H.R. REP. No. 96-1410, 96th Cong., 2nd Sess. 18 (1980). These projections were made in 1980 and are subject to DOL revision.

[15] Interview with James R. Yocum, Associate Director, Coal Mine Workers' Compensation Division, Office of Workers' Compensation Programs, Employment Standards Administration, DOL, June 10, 1981.

[16] Approval rates compiled from DOL sources by J. Huell Briscoe & Associates, Inc.:

	Cumulative through 12/31/79	Cumulative as of 2/20/81
Old Part C	59.2%	45.5%
New Part C	34.9%	29.0%
Part B	35.0%	28.1%

approval rates. From the week ending January 18, 1980 to the week ending February 20, 1981, for example, marginal approval rates dropped from 38.3% to 16.3%. As a result, the cumulative approval rate for the entire program was 34.6% as of May 22, 1981.[17]

This phenomenon has been attributed to a number of factors. One is increased professionalism in the body of federal claims examiners. Another is that current economic conditions appear to be producing a number of filings from former miners who are unable to document sufficient mining employment to qualify for the various statutory presumptions in the black lung law. Their claims have been denied.

The issuance of final medical regulations (the "718 regulations") by the Department of Labor (20 C.F.R. §718 (1978)) in February 1980 also is significant. Section 2(c) of the Reform Act directed the Secretary of Labor to develop regulations defining the term "total disability" and to establish "criteria for all appropriate medical tests" in consultation with the National Institute for Occupational Safety and Health. These became the "718 regulations." The Act further provided that the criteria applied to the pending and denied claims re-reviewed under Section 435, and to any claims filed before the promulgation of the "718 regulations," "shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973." The criteria applicable on June 30, 1973, or the so-called "interim standards" were developed pursuant to a Congressional directive in the 1972 black lung amendments (30 U.S.C. §901 (1972)) that the lack of definitive medical knowledge regarding pneumoconiosis be reflected in appropriately liberal medical criteria for determining total disability. Claims filed after the effective date of the "718 regulations" are subject to more restrictive medical criteria than earlier claims.

The DOL computer model used to project black lung program costs for budget formulation purposes assumes that annual marginal approval rates will decline to 15% by 1984 and remain at 15% through 1986. (See Table 3). In the future, if one applies this rate to the DOL estimate of incoming claims, only 2,000 to 3,000 new claims will be approved annually. Because most of these approved claims will be based on recent coal mine employment, an even smaller number will be assigned permanently to the trust fund.

5. *Controversions by Responsible Operators*

Since its establishment in 1978 the trust fund not only has carried out its responsibility to pay pre-1970 employment claims, but has shouldered the burden for a large proportion of the post-1969 claims—claims that Congress intended to be paid by responsible mine operators.[18] While 70% of the approved claims to date have been pre-1970 employment claims, as of April 1981 the fund was paying 95% of the claims in active payment status.[19]

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[17] Interview with Yocum, June 10, 1981.

[18] Responsible operators are obligated to pay approved claims for miners whose last coal mine employment occurred on or after January 1, 1970. The trust fund has interim and secondary responsibility for all such claims.

This unanticipated burden on the trust fund is clearly the result of operator controversions. Controversions affect the financial condition of the fund in two ways: (1) in order to make interim benefit payments, the fund must borrow from the Treasury (currently at an 11¾% interest rate), thus adding to the fund's deficit; and (2) when operators reimburse the fund at the end of an unsuccessful controversion, they pay only 6% interest.[20]

Before the enactment of the Reform and Revenue Acts, ROs paid Part C claims filed after 1973. The federal government paid such claims when a responsible mine operator could not be identified. Identification of the RO often was difficult, since employment records were not always available. As a result, in 1977 DOL was unable to identify a responsible operator for 75% of its approved claims filed after 1973.[21] Those claims were paid by the federal government.

In an effort to rectify this situation, the 1977 amendments assigned liability (to either trust fund or coal mine operator) on the basis of the last date of the claimant's coal mine employment. Under the current law, ROs need to be identified only for claims involving post-1969 work situations. In addition, the 1977 amendments require that all coal operators file pertinent data with the Department of Labor for insurance coverage purposes, aiding DOL's identification task. According to Department officials, DOL now is able to identify the RO for over 95% of the approved claims involving last employment on or after January 1, 1970.[22]

Since identification of responsible operators is no longer a problem, the reason for the unanticipated burden on the trust fund from post-1969 claims is the fact that 95% of these claims are initially challenged by the RO. During the period of controversion, the Trust Fund pays interim benefits to the claimant, frequently including large retroactive payments as well as monthly benefits that currently average $5,000 annually. (See Table 4).

The impact on the trust fund from controversions is determined by the number of claims in interim pay, the length of time interim payments must be made, and the extent to which the trust fund is able to recover money paid on an interim basis from unsuccessful operators or claimants.

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[19] DOL statistics (Black Lung Information System) show 84,257 claims in active payment status as of April 1981. Responsible operators have accepted liability for 4,087 of these claims, or 5%; the trust fund is paying the remainder.

[20] The House Education and Labor Committee attempted to correct this interest disparity in its Budget Reconciliation Report.

[21] Legislative History compilation at 1021.

[22] Interview with Howard Miller, Chief of Responsible Operators Section, Coal Mine Workers' Compensation, Employment Standards Administration, Department of Labor, April 23, 1981.

The amount of time consumed by the controversion process (and, therefore, the length of time interim payments are required) may range from one year to over four years. While two years has been cited as the average controversion period, the following description of the process illustrates that this is an optimistic estimate.

After an initial finding of eligibility has been made in an RO case, DOL notifies the RO of the claim award and requests him to accept liability or challenge the claim within 30 days. (20 C.F.R. §725.413 (1978)). If the operator chooses to controvert, he is given a period of time to collect evidence regarding the claim and an opportunity for a conference with the DOL deputy commissioner. After the conference a proposed decision and order is issued by the deputy commissioner. (20 C.F.R. §725.418 (1978)). Appeals from this decision are referred to administrative law judges. ALJ decision may be reviewed by the DOL Benefits Review Board (BRB). (20 C.F.R. §725.481 (1978)). Further appeals can be taken to the U.S. Courts of Appeal and to the Supreme Court. (20 C.F.R. §723.482 (1978)).

In FY 1980, 10,025 black lung cases were referred to ALJs. At current budget and personnel levels, the ALJ offices can process 5,500 to 6,000 cases per year. This year, between 9,000 and 11,000 cases will be referred to the ALJs.[23] The three member BRB has an inventory of 1,789 pending cases, and receives about 175 new cases per month. Because of this backlog, the projected time required for a BRB decision in a case filed today is 2½ years. In addition, several black lung appeals are pending in the federal circuit courts. These courts have case backlogs that vary from one to three years.[24] Given this situation, anyone assessing the condition of the trust fund must recognize that the interim benefits paid out by the fund have aggravated the current deficit by creating a significant short-term demand for funds.

Statistics on awarded claims indicate that over 28,000 of the claims approved by DOL as of February 20, 1981, were RO claims. At the 95% controversion rate, these claims represent an interim payments liability of well over half a billion dollars.[25]

At the conclusion of each controversion, the trust fund must seek repayment from the unsuccessful operator or claimant. At this point, the fund suffers a permanent loss of money because these repayments do not make the fund whole.

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[23] Telephone interview with Administrative Law Judge G. Marvin Bober, Office of Administrative Law Judges, DOL, May 26, 1981.

[24] Telephone interviews with Sydnee Schwartz, staff, Benefits Review Board, DOL, May 26 and 28, 1981.

[25] This is a conservative estimate based on the following assumptions: (1) the average controversion period is two years; (2) the average retroactive payment is $10,000; (3) the annual cost of monthly benefits is $5,000.

Although an unsuccessful operator must reimburse the trust fund with interest, the interest rate is only 6%. (20 C.F.R. §725.608 (1978)). In today's money market, this bargain interest rate may be an incentive to operators to delay payments. Moreover, the trust fund must pay a government market rate on its loans from the Treasury—currently 11¾%. Obviously, some of the loans are needed to make interim benefit payments and ultimately the fund pays for the difference between the two interest rates.

In cases where controversions are successful and a claimant is found to be ineligible for benefits, the Department of Labor is authorized to seek reimbursement of the interim benefits that were paid. (20 C.F.R. §725.540 (1978)). The recovery rates for such overpayments have not been identified by DOL, primarily because a relatively small percentage of controversions have been completed and the operator success rate for these has been low.[26] The initial DOL impression, however, is that there has been a high recovery rate with little effort expended.

Current figures indicate that only about 10–15% of the controversions are successful. This figure includes cases settled by operator acceptance of liability before an ALJ hearing has occurred but after the operator has had an opportunity to review the case file and determined whether to pursue the controversion.[27] This operator review process extends until an ALJ hearing has been scheduled, and usually necessitates more than a year of trust fund payments. The operator "success rate" appears to be slightly higher (30%) for cases continued through ALJ review.[28]

The low success rate apparently has not been a major disincentive to controversions. The major reason for controversion is that the Reform Act is a relatively new law, and many issues are still subject to judicial interpretation, thus encouraging operators to bring test cases. A second reason is the incentive provided by the low interest penalty associated with controversions.[29]

To date, the contributions to the fund made by ROs who were unsuccessful in controverting claims have been negligible. This reflects the length of time required by the controversion process. The cumulative amount received from collections from responsible coal operators in fiscal years 1978 through 1980 (approximately $6 million), is less than half of one percent of total fund outlays and is only one-tenth of the amount expended by the fund for interest payments (approximately $60 million).[30]

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[26] Interview with Yocum, June 10, 1981.

[27] Interview with Dorsey, April 23, 1981.

[28] Interview with Bob Briscoe, J. Huell Briscoe & Associates, May 14, 1981.

[29] Operators also claim inadequate time to gather information (30 days), but the availability of computer data from companies and/or insurance companies make the validity of this claim questionable.

[30] Treasury Annual Report, 4. (See also Table 1.).

The Department of Labor projects that responsible operator reimbursements will increase dramatically as most of the controverted claims work their way through the appeals process and unsuccessful ROs accept liability. As of March 1981, DOL estimated annual reimbursements of between $200 million and $300 million in the FY 1983–1986 period.[11] Further projections regarding controversion rates are uncertain. DOL believes that the rate will decrease as a body of law is developed under the 1977 black lung amendments. The assumptions followed by DOL (as of March 19, 1981) are that the number of RO cases in interim pay will peak at 27,200 in 1983, then drop significantly to 8,700 in 1984 and to 1,500 in 1986. (See Table 3).

The future impact of controversions on the fund will be much less onerous than the current impact. When the ongoing controversions are completed, the fund will receive substantial reimbursements from unsuccessful operators. In addition, the future universe of claims will be smaller and therefore the potential controversions will be fewer. At present, however, the high rate of controversion together with the difference between interest rates explain a significant portion of the trust fund deficit.

6. *Interest on Advances from the General Fund*

When receipts from the coal tax are inadequate to meet the obligations of the trust fund, trustees of the fund are authorized to borrow money from the general fund of the Treasury. Under the law, advances from the general fund are to be repaid with interest (Revenue Act §3(b) (2), 30 U.S.C. §934a(b) (2) (1978)). Undoubtedly, the greatest force behind the billion dollar trust fund deficit is the interest payments requirement.

The interest component of the deficit has increased significantly during the past four years and will continue to compound in the future. The interest rate set by statute is equal to the average rate of interest "borne by all marketable interest bearing obligations of the United States then forming a part of the public debt." (Revenue Act §3(b) (2), 30 U.S.C. §934a(b) (2) (1978)). The rate is computed monthly and compounded annually pursuant to a memorandum of understanding between the Departments of Treasury and Labor. Essentially, the fund pays off its interest charges on a yearly basis by refinancing its debt at the current rate. Loan records of the fund indicate a range of interest rates from 7¼% (for advances made in December 1978) marching steadily upwards to 11¾% (for advances made in June 1981).[12]

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[11] Interview with Joseph Voytek, Chief, Division of Planning, Policy and Review, Employment Standards Administration, DOL, May 28, 1981. DOL is revising these estimates with a more sophisticated computer model and does not vouch for their accuracy. Revised estimates will be available later this summer.

[12] Interviews with Richard Buschman, Chief, Trust and Revolving Funds Branch, Bureau of Government Financial Operations, Department of the Treasury, April 24 and June 17, 1981.

An indication of the growing impact of interest payments can be seen by comparing FY 1979 interest payments ($7 million or 1.2% of total outlays) and FY 1980 ($52 million or 6.5% of total outlays). The cumulative interest payments made by the fund through September 30, 1980 were $60 million. The projected interest payment required for FY 1981 is $113 million—almost double the amount of cumulative interest payments to date.

The Office of Management and Budget has projected that the annual average debt interest rate will decrease, dropping to 6.8% by 1986. Based on this assumption, DOL projects that the annual trust fund costs attributable to interest payments will peak at $180.1 milllion in 1984 and decline to $155.6 million by 1986 under current law; cumulative interest payments through 1986 would be a billion dollars. (Compare with Table 3). The total trust fund deficit, under these assumptions, would be $6.5 billion by 1995, with an interest component of $2.7 billion.[33]

7. *Payment Reduction Requirements*

In addition to the number of claims assigned to the trust fund for payment, the size of the monthly benefit per claim obviously has an impact on trust fund outlays. Under the law, monthly benefits may vary for several reasons. Benefit payments are based upon 50% of the GS-2 civil service disability payments scale. Table 4 shows the average cost of a black lung claim over 20 years and Table 5 shows the past and current benefit payments scale. In addition, however, the law and regulations require reductions in benefit payments when a miner or survivor is receiving benefits for disability or death due to pneumoconiosis under a state workers' compensation statute (20 C.F.R. §725.535 (1978)). At the present time, several states have black lung laws that provide payments to miners disabled by pneumoconiosis. Under the terms of the federal regulations, depending upon the compensation rates set by state statute, those state benefits could offset federal benefits either totally, as in Pennsylvania and Kentucky, or partially, as in Virginia and West Virginia.[34]

Some observers of the black lung program have been concerned that appropriate offsets are not being made for state benefits; however, our review has not been able to quantify any impact on the trust fund that could be attributed to inadequate offsets. At this time, precise data on the impact of offsets on the trust fund is not available at DOL.

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[33] Interview with Voytek, May 28, 1981. This projection is based on assumptions as of March 19, 1981 that are subject to revision.

[34] PA. STAT. ANN. tit. 77, §1401 (1979); KY. REV. STAT. §§342.316, 342.317 (1976); VA. CODE §651 (1975); W. VA. CODE §23-4B (1973). Other states with black lung laws are Illinois, Ohio, Tennessee and Indiana.

Because none of the state black lung laws cover claims based on pre-1970 employment, failure by DOL to make appropriate offsets would have small impact on the trust fund today. However, offsets will become more important in future years as the number of post-1969 (RO) claims with potential offsets increases. If the trust fund does not make state offsets from the interim benefits paid for RO claims, it will have limited success in recovering these overpayments from responsible operators at the end of the controversion process. The operator who loses a controversion will argue that he is not liable to the trust fund for payments the fund should not have made.[35] This will aggravate the detrimental effect of controversions on the trust fund. Since an increasing number of claims will have offsets for state benefits, the average size of trust fund payments should decrease.

8. *Trust Fund Receipts*

The major source of trust fund receipts is the excise tax on coal production. The current tax rate is 50 cents per ton on coal from underground mines and 25 cents per ton on coal from surface mines. A ceiling of 2% of the producer's sale price per ton is placed on the tax rate. (Internal Revenue Code §4121). Certain other taxes and penalties, interest payments and income may also be transferred to the fund.

The excise tax on coal has contributed a total of $585,926,468 to the trust fund in fiscal years 1978–1980. Revenues from the other sources have been insignificant.[36] Obviously intended to be the major source of revenue for the fund, the coal tax has not been sufficient to meet the required outlays for the black lung benefits program, which have totalled $1,542,550,008 during the same period.

An inherent problem with the excise tax system under current law is that the tax rate has no direct relationship with black lung benefit levels. As previously stated, monthly benefit payments must be adjusted to reflect changes in the civil service disability pay scale. (30 U.S.C. §922 (a) (1) (1969)).[37] These payments have increased on an annual basis (See Table 5), while tax receipts have been based on a flat tax rate.

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[35] Interview with Briscoe, May 14, 1981.

[36] Taxes received by operation of Section 4952 of the Internal Revenue Code are also transferred to the fund. Receipts from this source have been only $250.00 through September 30, 1980. The fund also receives fines, penalties, and interest payments paid under Sections 423, 431 or 432 of the Federal Mine Safety and Health Act. As of the end of FY 1980 nothing had been collected under this authority. Finally, the managing trustee of the fund is directed to make investments of fund assets that are not needed to meet current withdrawals. During 1978 and 1979 the fund collected over $1 million on its investments. Additional investments cannot be made until the fund becomes solvent.

[37] A disabled miner is paid benefits at a rate equal to 50% of the minimum monthly payment to which a federal employee in Grade GS-2, who is totally disabled, is entitled at the time of payment under Chapter 81 of Title 5, United States Code.

Of course, tax receipts have increased and will continue to do so as coal production increases and, to a lesser extent, as the price of coal rises. Tables 6—8 provide mid-level projections of coal production,[18] along with the revenue that would accrue to the trust fund under different tax levels, and Table 9 projects predicted outlays and the date at which the trust fund would become solvent at each tax rate. These tables clearly show that the Black Lung Disability Trust Fund can be a success in very few years simply by adjusting the tax rate, a possibility that was foreseen by Congress at the time the fund was created.

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[18] Production figures are an average of projections provided by staff of the Energy Information Administration, Department of Energy, and the Coal Leasing Office, Department of Energy, in telephone interviews conducted in April 1981, and *The Direct Use of Coal*, an Office of Technology Assessment Study (1979).

SUMMARY

Eight substantive factors combined to determine the current status of the Black Lung Disability Trust Fund. The fund had a deficit of nearly one billion dollars at the end of fiscal 1980. Most of the factors that contributed to the deficit were either one-time or short term, and indications are that their negative impact is over, that the trust fund's future willl be extremely positive.

1. Provisions of the Black Lung Benefits Reform Act that called for a review of pending or previously denied claims resulted in many thousands of claims being assigned to the trust fund and caused an almost immediate deficit. These provisions called for outlays roughly estimated at $1.25 billion—more than the entire current debt. The review process now is virtually complete, and similar demands on the fund will not recur.

2. Those re-reviewed and approved claims were unique in that they involved large initial payments of retroactive benefits. Newer approved claims generally have much lower such payments. DOL projects that the $14,000 average of 1979 will decrease to $3,000 in 1982.

3. Because most post-1969 claims (100% by 1988) are assigned to responsible operators, the liability of the trust fund (in terms of number of claims) will decrease steadily.

4. The rate of approval of benefit claims has decreased substantially because of more stringent medical criteria and less dusty working conditions since 1969.

5. The high rate of operator controversions—95 percent—has saddled the fund with temporary responsibility for beneficiaries that Congress intended to be the responsibility of individual coal mine operators. Improved operator identification, creation of a body of law (to be available as precedent) and completion of existing controversions will minimize this factor in the near future. Equalization of interest rates also would have a positive effect.

6. Through fiscal 1980 the fund had expended some $60 million in interest charges for funds borrowed to make benefit payments. This factor will continue to escalate if the fund deficit is allowed to grow.

7. Payment reductions are required in cases where states provide benefits for disability due to pneumoconiosis. To date this has had minimal impact on the fund.

8. Most trust fund receipts come from the tax on coal production, currently set at $.50 per ton on underground coal and $.25 per ton on surface coal. This is a fixed rate, while benefit levels are adjusted periodically in accordance with the civil service disability pay scale. As a result, benefit payments rise at a faster rate than do receipts, with obvious implications for the trust fund.

Briefly, the most important factor in the trust fund deficit is the re-review mandated by law that led to expenditures of $1.25 billion. A higher tax rate, as anticipated by the Congress, will eliminate the deficit in a few short years.

Table 1

Status of Black Lung Disability Trust Fund, actual fiscal years 1978–80
(In thousands of dollars, rounded)

	RECEIPTS					OUTLAYS			
Fiscal Year	Excise taxes	Interest	Advances from general fund	I.R. Code sec. 4952 taxes	Fines, penalties and interest	Benefit payments	Administrative expenses	Interest on repayable advances	Interest on tax refunds
Actual:									
1978	92,050	1,192	18,925	—	—	[1] 76,797	[2] 35,346	—	—
1979	221,614	122	400,809	—	—	[3] 582,038	32,149	7,740	—
1980	272,262	—	535,837	—	—	[4] 721,746	34,238	52,497	—
TOTAL	585,926	1,314	955,571			1,380,581	101,733	60,237	

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[1] Includes $62,248,490 for reimbursement of benefits paid between Jan. 1, 1974, and Mar. 31, 1978. Also includes $444,348 for reimbursements to mine operators and counts as a negative outlay $511,878 from collections from responsible coal operators.

[2] Includes $27,084,672 for reimbursement of administrative expenses paid between Jan. 1, 1974, and Mar. 31, 1978.

[3] Includes $513,391 for reimbursements to mine operators, and counts as a negative outlay $1,058,431 from collections from responsible coal operators.

[4] Includes $10,245 for reimbursements to mine operators, and counts as a negative outlay $4,724,358 from collections from responsible coal operators.

Department of the Treasury, Third Annual Report on the Financial Condition and Results of Operations of the Black Lung Trust Fund, Statement No. 2 (1980).

Table 2

Summary of Claims Activity
Department of Labor Black Lung Program
Cumulative through April 17, 1981

Total to Date

Type of Claim	*Total Rec'd*	*Decisions*	*Approvals*	*Denial*	*Undecided*
435 Part C	125,229	125,229	56,957	68,272	0
Part B Denials	73,933	61,995	17,298	44,701	11,934
SSA Approvals	24,406	24,406	24,406	0	0
* Subtotal	223,568	211,634	98,661	112,973	11,934
New Part C	82,393	66,554	18,224	48,330	15,839
Total	305,961	278,188	116,885	161,303	27,773

* Represents total number of pending and denied claims re-reviewed under 1977 amendments.

Department of Labor, Black Lung Program Claims Status Report, April 17, 1981.

Table 3

United States Department of Labor
Employment Standards Administration

Key Variables and Assumptions Used to Estimate Black Lung Disability Trust Funds Obligations

Fiscal Year	Annual Number Incoming Claims[1]	Percent of Responsible Operator Versus Trust Fund	Approval Rate	Number of RO Cases in Interim Pay for Monthly Benefits	Total Number of TF and RO Cases Receiving Monthly Benefits	Average Retroactive Payment	Annual Benefit Inflator	Annual Medical Inflator	Annual Average Debt Interest Rate	Total Trust Fund Obligations
1981	25,000	35/65%	20.0%	15,685	92,850	$ 8,000	10.12%	11.2%	9.75%	$ 797.3
1982	22,000	35/65%	25.0%	23,900	107,875	$ 3,000	5.0%	11.2%	9.3%	$ 785.0
1983	18,000	40/60%	20.0%	27,200	108,850	0	5.0%	11.2%	8.8%	$ 794.0
1984	15,000	50/50%	15.0%	8,700	91,590	0	5.0%	11.2%	8.4%	$ 703.0
1985	15,000	55/45%	15.0%	4,500	84,560	0	5.0%	11.2%	7.6%	$ 690.0
1986	13,000	60/40%	15.0%	1,500	78,675	0	5.0%	11.2%	6.8%	$ 662.0

[1] Excludes MBO, for monthly benefits only.

Department of Labor, Employment Standards Administration, March 19, 1981.
These variables and assumptions used for projections regarding the Black Lung Program are being revised by DOL, as it improves its computer model. New projections should be available during this summer.

Table 4

Estimated Cost of Average Claim for a Living Miner and Survivor Over a 20-year Period, 1979–1999

Year	Average Yearly Payment	Percent Yearly Increase	Total Compensation	Medical Benefits	Yearly Increase	Total Medical Benefits	Total Benefits
Miner							
1979	$3,876.00	1.00	$3,876.00	$300.00	1.000	$300.00	$4,176.00
1980	3,876.00	1.095	4,244.22	300.00	1.112	333.60	4,577.82
1981	4,244.22	1.07	4,541.32	333.60	1.112	370.96	4,912.28
1982	4,541.32	1.07	4,859.21	370.96	1.112	412.51	5,271.72
1983	4,859.21	1.07	5,199.35	412.51	1.112	458.71	5,658.06
1984	5,199.35	1.07	5,563.31	458.71	1.112	510.09	6,073.40
1985	5,563.31	1.07	5,952.74	510.09	1.112	567.22	6,519.96
1986	5,952.74	1.07	6,369.43	567.22	1.112	630.75	7,000.18
1987	6,369.43	1.07	6,815.29	630.75	1.112	701.39	7,516.68
1988	6,815.29	1.07	7,292.36	701.39	1.112	779.95	8,072.31
1989	7,292.36	1.07	7,802.83	779.95	1.112	867.30	8,670.13
1990	7,802.83	1.07	8,349.03	867.30	1.112	964.44	9,313.47
1991	8,349.03	1.07	8,933.46	964.44	1.112	1,072.45	10,005.91
1992	8,933.46	1.07	9,558.80	1,072.45	1.112	1,192.57	10,751.37
1993	9,558.80	1.07	10,227.92	1,192.57	1.112	1,326.14	11,554.06
1994	10,227.92	1.07	10,943.87	1,326.14	1.112	1,474.66	12,418.53
			106,653.14			11,662.74	118,315.88
Survivor							
1995	10,943.87	1.07	11,709.94				
1996	11,709.94	1.07	12,529.64				
1997	12,529.64	1.07	13,406.71				
1998	13,406.71	1.07	14,345.18				
1999	14,345.18	1.07	15,349.34				
			67,340.81				67,340.81
Total			173,993.95			11,662.74	185,656.69

1980 Department of Labor Annual Report on Administration of the Black Lung Benefits Act, at p. 32.

Table 5

Average Monthly Black Lung Benefit
Fiscal Years 1973–1980

Year	Beneficiaries			
	Claimant	Claimant and 1 dependent	Claimant and 2 dependents	Claimant and 3 or more dependents
	Dollars	*Dollars*	*Dollars*	*Dollars*
7-1-73 thru 9-30-73	169.80	254.70	297.10	339.50
10-1-73 thru 9-30-74	177.60	266.40	310.80	355.20
10-1-74 thru 9-30-75	187.40	281.10	328.00	374.80
10-1-75 thru 9-30-76	196.80	295.20	344.40	393.50
10-1-76 thru 9-30-77	205.40	308.10	359.50	410.80
10-1-77 thru 9-30-78	219.90	329.80	384.80	439.70
10-1-78 thru 9-30-79	232.00	348.00	405.90	463.90
10-1-79 thru 9-30-80	254.00	381.00	444.50	508.00

1980 Department of Labor Annual Report on Administration of the Black Lung Benefits Act, at p. 32.

Table 6

Coal Production and Trust Fund Revenues at the Current Tax Rate*

	Underground Coal Production (1000 Tons)	Revenues ($) 50¢/ton	Surface Coal Production (1000 Tons)	Revenues ($) 25¢/ton	Total Revenues ($)
1980	315,028	157,514,000	470,294	117,573,500	275,087,500
1981	334,710	167,355,000	492,583	123,145,750	290,500,750
1982	355,946	177,973,000	515,942	128,985,500	306,458,500
1983	378,867	189,433,500	540,457	135,114,250	324,547,750
1984	403,626	201,813,000	566,225	141,556,250	343,369,250
1985	430,000	215,000,000	593,666	148,416,500	363,416,500
1986	466,270	233,135,000	623,448	155,862,000	388,997,000
1987	505,847	252,923,500	654,776	163,694,000	416,617,500
1988	548,973	274,486,500	687,718	171,929,500	446,416,000
1989	596,000	298,000,000	722,340	180,585,000	478,585,000
1990	646,167	323,083,500	757,833	189,458,250	512,541,750

* The current tax rate is $.25/ton on surface coal and $.50/ton on underground coal.

Production figures are based on an average of projections provided by the Energy Information Administration. Department of Energy (1981); the Coal Office, Department of Energy (1981); and *The Direct Use of Coal*, an Office of Technology Assessment Study, 1979.

Table 7

Coal Production and Trust Fund Revenues at Twice the Current Tax Rate

	Underground Coal Production (1000 tons)	Revenues ($) $1.00/ton	Surface Coal Production (1000 tons)	Revenues ($) $.50/ton	Total Revenues ($)
1980	315,028	315,028,000	470,294	235,147,000	550,175,000
1981	334,710	334,710,000	492,583	246,291,500	581,001,500
1982	355,946	355,946,000	515,942	257,971,000	613,917,000
1983	378,867	378,867,000	540,457	270,228,500	649,095,500
1984	403,626	403,626,000	566,225	283,112,500	686,738,500
1985	430,000	430,000,000	593,666	296,833,000	726,833,000
1986	466,270	466,270,000	623,448	311,724,000	777,994,000
1987	505,847	505,847,000	654,776	327,388,000	833,235,000
1988	548,973	548,973,000	687,718	343,859,000	892,832,000
1989	596,000	596,000,000	722,340	361,170,000	957,170,000
1990	646,167	646,167,000	757,833	378,916,500	1,025,083,500

See Table 6 for production estimate sources.

Table 8

Coal Production and Trust Fund Revenues at 2% Tax*

	Underground Coal Production (1000 tons)	Revenues ($) 2%	Surface Coal Production (1000 tons)	Revenues ($) 2%	Total Revenues ($) 2%
1980	315,028	155,434,810	470,294	232,043,050	387,477,860
1981	334,710	173,446,720	492,583	255,256,510	428,703,230
1982	355,946	193,634,620	515,942	280,672,440	474,307,060
1983	378,867	216,408,830	540,457	308,709,030	525,117,860
1984	403,626	242,094,870	566,225	339,621,750	581,716,620
1985	430,000	270,814,000	593,666	373,890,840	644,704,840
1986	466,270	308,390,970	623,448	412,384,500	720,775,470
1987	505,847	351,260,150	654,776	454,676,450	805,936,600
1988	548,973	400,311,110	687,718	501,483,960	901,795,070
1989	596,000	456,297,600	722,340	553,023,500	1,009,321,100
1990	646,167	519,389,030	757,833	609,146,160	1,128,535,190

* Included is an estimated inflation rate of 5%.

See Table 6 for production estimate sources.

Table 9

Trust Fund Solvency

DOL ESTIMATED YEAR COST

	Without Interest	Interest	Total
1980	1,008,200,000	67,600,000	1,075,800,000
1981	736,700,000	123,600,000	860,300,000
1982	436,900,000	156,800,000	593,700,000
1983	439,900,000	176,500,000	616,400,000
1984	472,500,000	195,500,000	668,000,000
1985	484,000,000	214,000,000	700,000,000
1986	495,800,000	230,700,000	726,500,000
1987	508,000,000	245,200,000	753,200,000
1988	520,800,000	256,900,000	777,700,000
1989	534,200,000	264,900,000	801,100,000
1990	548,600,000	268,400,000	817,000,000

TAX RATE	*YEAR OF SOLVENCY*
50¢/25¢	?
$1.00/50¢	1985
2%	1987

Mr. CHURCH. Thank you, sir. Black lung describes the irreversible and often deadly lung diseases afflicting miners unnecessarily exposed to coal mine dust. Despite the fact that coal workers' pneumoconiosis (CWP) had been recognized as a compensable occupational disease in Europe for several decades, the American medical and legal communities ignored the plight and suffering of coal miners.

Congress first gave recognition to the black lung problem when it enacted the historic Federal Coal Mine Health and Safety Act of 1969. Although CWP was the only disease mentioned in workers' compensation laws, Congress legalized the term "black lung" as a synonym for that disease in the 1969 act.

That law provided partial benefits for black lung victims and, for the first time, mandated the eradication of a major occupational disease. To prevent the disease, the act stipulated the dates by which decreasing levels of respirable dust in the coal mines must be achieved.

It also directed periodic lung X-ray examinations of working miners.

Congress also recognized that CWP had claimed so many victims that no State or coal company had resources to cope with even partial benefits. Congress determined that these people had already waited too long; immediate action was necessary.

The Black Lung Benefits Act of 1972 was the answer to substantial complaints about the administration of the program. People felt that the Social Security Administration was ill-equipped to handle the avalanche of claims and that it treated people unfairly. While several thousand widows of men whose death could be attributed to CWP, and totally disabled miners with characteristic lung X-rays began to receive benefits, thousands more who were equally disabled were denied payments because they had no X-ray evidence of CWP.

The 1972 amendments, in order to provide for such disabled miners, specified that no application shall be denied solely on the basis of a negative X-ray. This means that the term "black lung" is generic and in addition to CWP includes dust-induced bronchitis and emphysema.

The Black Lung Benefits Reform Act of 1977 amended the existing eligibility requirements so that all deserving claimants would receive benefits. It also required that pending or denied claims be reviewed under the new criteria.

The Black Lung Disability Trust Fund was mandated by the Black Lung Benefits Revenue Act of 1977. The Revenue Act was designed to place primary financial responsibility for the black lung benefits program on the coal mining industry rather than the Federal taxpayer. The financial system was to be self-sustaining. Mine operators were required to pay benefits to black lung victims for whom they were legally responsible and a trust fund, financed through a tax on coal production, was established to pay benefits to other approved claimants.

Congress realized that the trust fund would not be self-sustaining at first. The provision authorizing advances from the Treasury reflected the realization that the coal tax receipts would be insufficient during the first several years. The sponsors acknowledged that the coal tax might not produce significant revenues to meet the needs of the trust fund. The floor managers of the bill made it clear that, if receipts were to prove inadequate, Congress would adjust the tax rate.

Congress purposefully and carefully separated the Revenue Act from the Reform Act. Adjustments in the Revenue Act, therefore, should not be linked to changes in the provisions of the Reform Act.

Under the Revenue Act, inadequate funding was virtually assured. Trust fund receipts are tied to a flat tax rate per ton of coal, while black lung benefits are tied to a sliding payments scale. Thus, black lung benefits levels have increased periodically, while the tax rate has remained constant. Clearly, it is time for Congress to follow through with its promise to adjust the coal tax.

The current financial difficulties of the trust fund can be traced to a number of causes. These are explained in detail in the analysis that we submitted for the record. The impact of most of these factors occurred in the initial years of the trust fund. Such an impact will not be repeated. The most significant factors were the re-review of pending and denied claims, the payment of large retroactive benefits, the assignment of an exceptionally large number of claims to the trust fund, and controversions of virtually every claim by responsible operators.

Over 220,000 claims were received by DOL and SSA for re-review. The vast majority of those claims have been decided at the administrative level, with the responsibility for most of the approved claims resting with the trust fund. The current backlog of less than 12,000 claims soon will be eliminated and future claims hopefully will be processed in a timely manner. It is readily apparent that the impact of the review process has passed.

In addition to the large number of old claims that were re-reviewed and approved, the claims were unique in that they involved large initial payments of retroactive benefits. These large payments have been the major component of trust fund outlays. Many of the reviewed claims qualified for a maximum retroactive benefit payment. These payments usually amounted to several thousand dollars each. For example, a miner with three dependents whose claim was filed any time before 1974, and approved on January 1, 1979, would have received approximately $24,000 in retroactive benefits with his first monthly payment. These high retroactive payments contrast sharply with current and projected retroactive payments. A rough estimate would be that over 60 percent of the fund's outlays since 1978 have been for retroactive benefits. The impact on the fund of large retroactive payments represents a one-time deviation in the black lung program that will not be repeated.

The mixture of claims approved under the black lung program is another factor that has and will influence the condition of the trust fund. Thus far, the claim mix has resulted in heavier demands on the trust fund than directly on the responsible coal operators. However, this situation will change.

Since 1978, about 70 percent of the approved claims have been pre-1970 employment claims. The proportion of claims assigned to the trust fund is greater with respect to the older claims than the new claims. About 76 percent of the claims awarded under the provisions of the Reform Act were pre-1970 or trust fund claims. In comparison, claims based upon employment prior to 1970 have made up only 66 percent of the new approvals.

These percentages will continue to change because the claimant population will shift to one with more recent coal mine employment. DOL estimates that the trust fund share of incoming claims will continue to decline and that by 1986, the claims mixture will be reversed, that is, 60 percent of the claim awards will be responsible operator claims. By 1988, DOL has projected that 100 percent of the approved claims will be assigned to responsible operators.

Since its establishment in 1978, the trust fund not only has carried out its responsibility to pay pre-1970 employment claims, but has shouldered the burden for a large proportion of the post-1969 claims—claims that Congress intended to be paid by responsible mine operators. As of April 1981, the fund was paying 95 percent of the claims in active payment status.

This unanticipated burden on the trust fund is clearly the result of operator controversions. Controversions affect the financial condition of the fund in two ways. In order to make interim benefit payments, the fund must borrow from the Treasury at prevailing interest rates, thus adding to the fund's deficit. When operators reimburse the fund at the end of an unsuccessful controversion, they pay only 6-percent interest.

Identification of responsible operators is not a problem. The reason for the unanticipated burden on the trust fund from post-1969 claims is the fact that 95 percent of these claims are initially challenged by the responsible operator. During the period of controversion, the trust fund pays interim benefits to the claimant, frequently including large retroactive payments as well as monthly benefits that currently average $5,000 annually.

At the conclusion of each controversion, the trust fund must seek repayment from the unsuccessful operator. At this point, the fund suffers a permanent loss of money because these repayments do not make the fund whole.

Current figures indicate that only about 10-15 percent of the controversions are successful. The low success rate, however, apparently has not been a major deterrent to controversions. Although an unsuccessful operator must reimburse the trust fund with interest, the interest rate is only 6 percent. In today's money market, this bargain interest rate may be an incentive to operators to delay payments. Moreover, the trust fund must pay a Government market rate on its loans from the Treasury—currently about 12 percent. Obviously, some of the loans are needed to make interim benefit payments and ultimately the fund pays the difference between the two interest rates.

The size of the current trust fund deficit is a cause of concern for everyone involved in the black lung program. However, the most important point derived from an examination of the factors that led to the deficit is that it is impossible to rely on unique past circumstances to predict the future. In fact, the greatest demands on the trust fund already have occurred. With one exception—the growing interest component of the fund's deficit—changing circumstances already have lessened the demands on the fund. Essentially, the worst is over for the trust fund.

Even though we firmly believe that the worst is over, we are concerned about the continuing deficit. The latest DOL projections—and we hope these, unlike previous efforts, prove reasonably accurate—show a trust fund deficit of nearly $8.4 billion in 1995 if we maintain the current tax rate. Most of this deficit will be composed of accrued interest.

Congress has it in its power to prevent this from happening. First, we must eliminate the need for advances from the Treasury to halt the escalating interest spiral. Second, we must retire the debt as soon as possible. DOL's latest figures indicate that, at a tax rate of $1 per underground ton and $0.50 per surface ton, the trust fund will continue to require advances through fiscal year 1987 and will not be solvent until fiscal year 1996. If the tax is set at $1.20 per underground ton and $0.60 per surface ton, DOL's model shows that the fund will cease borrowing in fiscal year 1983 and will retire its debt completely by 1990.

Congress intended the coal operators, not the general public, to pay for the black lung program. Fiscal responsibility requires that coal production taxes be set at a level necessary to eliminate taxpayer involvement in the black lung program in short order.

In addition to increasing the coal tax, Congress should eliminate the interest repayment differential that currently exists. The 6-percent interest paid by operators after unsuccessful controversions acts as an incentive for controversion. As I said before, in today's money market, 6 percent is a bargain interest rate. The operators gain, the taxpayers lose, and the trust fund deficit grows. This is clearly unfair and irresponsible.

Congress also should examine ways to discourage frivolous controversions, since these force the trust fund to bear an unnecessary and costly responsibility for benefits payments. In our opinion, some operators controvert claims capriciously in order to delay payments. While equalizing the interest repayment rates will help solve this problem, Congress should consider creating a mechanism to determine when a controversion is capricious, and operators found guilty of such delaying tactics should be assessed interest penalties.

Although the subject of this hearing is the financial condition of the trust fund, I feel it is appropriate to add a few words about the real issue—black lung. Black lung can be wiped out in one generation. All we have to do is take a few short steps forward. One is to insist that respirable dust be reduced to a level that is not dangerous. The current mandated level is 2 milligrams of respirable dust per cubic meter of air—and cases of black lung continue to appear. MSHA tells us that more than half of the Nation's mines currently have reached a level of one milligram. The 1-milligram level means healthier and more productive miners. That level is achievable and desirable. It should be mandated.

A second easy step is to improve the current system of periodic chest X-rays of working miners. Three measures can and should be taken:

First, the National Institute for Occupational Safety and Health should make the chest X-ray examinations of all working coal miners.

Second, X-ray examinations should take place on-shift rather than before or after work so that 90 percent or more of the miners will be examined regularly.

Third, Surface miners and auger miners should be included in the X-ray program.

The UMWA further submits that the dust sampling program will not attain full effectiveness until exclusive control of the program is removed from the operators. The miners must play an active role in the dust-sampling process. Three years ago, we submitted a plan for a joint operator-miner controlled dust-sampling program to MSHA; to date MSHA has not acted on this proposal.

While little has been done to eliminate black lung, there are those who have suggested that there need to be changes in the eligibility provisions of the black lung law. I want to point out that, economically, such changes would not substantially affect the condition of the Black Lung Trust Fund. They would, however, deprive a handful of needy people of their just due. The trust fund can be viable with no change at all in the eligibility provisions. Those who advocate change do so for reasons of philosophy, not economy; and in doing so, they lose sight of the human element. We are talking about people who have had their lives made miserable—because of uncontrolled coal mine dust. People who have died and left destitute families—because of uncontrolled coal mine dust. When there is a dispute between humanity and philosophy, Congress and the American people have always chosen to be humane. To speak of the economics behind changes in eligibility criteria is not only inhumane—it is cruel and irrelevant.

Mr. Chairman, there has been a great deal of talk in the Reagan administration about the free market; but freedom, as we all know, both implies and requires responsibility. If the coal industry is to operate in the free market, it must accept responsibility for the death and disability that continues to occur.

In the past, the cost of occupational diseases and fatalities has been passed along to the miners and the American public. In other words, the industry has externalized this cost of producing coal. The coal mine operators historically have put money into their own pockets that, by right, must go to the protection of the miners' health and safety.

In a free market, the cost of production must include all costs, such as capital, equipment, labor, maintenance, and overhead. The cost of health and safety must be included in these calculations. Only then will the full cost of production be reflected in the price of coal. Economists call this process internalization.

To fully internalize health and safety costs, the coal industry must do two things. As a matter of equity, they must:

First, eliminate occupational diseases and disabling accidents; and second, provide adequate compensation to the families of victims.

One of the avowed precepts of our Government has always been the protection of property. In fact, it has long been recognized as a right extended to all citizens. This right of the people to have their property protected was essential for protecting the home and the place of business. Of more recent date, this protection as a right has been extended to include health. This was necessary because the maintenance of good health and the ability to work is the only property workers have to assure economic sustenance. Thus, Government has the responsibility to take all possible steps to protect the workers' health—this is their property. Loss of this property through illness increases governmental expenditures at some point. Prudence certainly indicates that job-related illness must be avoided if the State is fulfilling its obligation.

As I stated before, black lung can be eliminated, without question, in one generation. Until it is eradicated, however, the price of coal will not reflect real costs. The question is not whether, but when, the coal industry will assume the full cost of producing coal. The UMWA and the American people will not accept a coal industry that is subsidized by the lives and lungs of the coal miners.

In conclusion, Mr. Chairman, the UMWA believes the future of the Black Lung Disability Trust Fund will be bright. There is an unquestionable need to increase revenues, but we are convinced that the most difficult phase in the life of the trust fund has passed. To secure a good financial condition in the future, Congress should: First, increase the tax on coal tonnage; second, equalize interest repayment rates; third, establish disincentives to capricious controversions; fourth, provide sufficient resources to process claims; and fifth, eliminate the disease by reducing dust levels.

The UMWA looks forward to working with this committee and the Congress in an all-out effort to eliminate black lung and provide compensation to the victims.

Thank you.

Chairman Rangel. Thank you.

Mr. Duncan.

Mr. Duncan. Thank you, Mr. Chairman. Thank you, Mr. Church, for your presentation.

You indicate that you wanted the coal tax increased, and you mentioned two sets of higher rates. Do you believe that doubling the current tax rate is appropriate? Do you have an alternative rate to propose?

Mr. Church. Well, I think in our presentation, we have said that doubling the rate would make it solvent by 1996, and by taking the rate to $1.20 and 60 cents, would make it solvent, I believe, by the year 1990, sir.

Mr. Duncan. Mr. Church, as indicated earlier, I have always voted, in the 17 years I have been in the Congress, for every black lung benefits bill we have had in the Congress.

But I would think you are being somewhat unfair when you said that if a miner, or ex-miner, died with black lung, that you blame President Reagan. I think that is going just a little bit too far and almost irresponsible to make a statement like that.

Mr. Church. Who said that?

Mr. Duncan. You indicated that a while ago in your statement.

Mr. Church. I wish you would point that out.

Mr. Duncan. They must accept responsibility. That was the way I understood it.

Mr. **Church**. I said the coal industry must accept the responsibility. I don't recall——

Mr. **Duncan**. You said the Reagan administration, but maybe you meant the coal industry. I wrote it down, when you said it, because I didn't think you really intended that.

Mr. **Church**. Maybe it didn't come out the way it was intended.

Mr. **Duncan**. If I am wrong, I apologize, and if you are wrong, I think you should.

Mr. **Church**. I certainly will.

Mr. **Duncan**. You mentioned, too, benefits. A report was out recently that claims black lung benefits were awarded without adequate evidence of disability. What is your response to the conclusion of that report?

Dr. **Kerr**. If I may, Mr. Duncan, you will find that that is not quite so, because what happened was, I assume that you are referring to the GAO study.

Mr. **Duncan**. Yes, sir.

Dr. **Kerr**. Done on the social security benefits.

Mr. **Duncan**. Yes, sir.

Dr. **Kerr**. Well, as you read that study, you will find that they acknowledged that the applications were approved in accordance with what Congress had written into the law, and that there had been no attempt on anybody's part to circumvent the legislation or the regulations.

Mr. **Duncan**. Well, do you think that eligibility requirements should be tightened?

Dr. **Kerr**. No, I do not.

Mr. **Duncan**. The——

Dr. **Kerr**. By "tightened," I assume you mean more difficult.

Mr. **Duncan**. I will yield to the Chairman.

Chairman **Rangel**. I guess Mr. Duncan and I would be asking, under existing regulation, whether healthy people are receiving benefits not associated with the black lung disease, or not associated with working in the coal mine, because I think that we all agree that we should be improving the benefits for those people who suffered a disease which is related to their work experience.

So I appreciate your answer that no one is violating the law, and that they have met the congressional standards. That is in the report. Nevertheless, GAO concludes that a lot of healthy people are receiving disability benefits, thus depriving other people of improved benefits.

That is the thrust of the question, not whether or not people are breaking the law.

Mr. **Church**. Congressman, I'd like to say this. I am sure with your experience and ours, that you will always find some people that wind up on the rolls that may not deserve to be there. That happens in our social security and welfare, but I don't think the numbers are significant in our black lung program.

Having worked in the mines, I know the effect the dampness and the dust has on your lungs. I think one thing that is very unfair to the miner who is suffering from black lung is the fact that in the testimony, I pointed out here, that because of the large lump-sum back payments, it is a shame that a program like this, that a man must wait several years after he's been disabled before he can even receive the benefits that he is due because the process has been so slow in approving this, and in many cases, the widow gets the benefit, not the miner with the disease.

Mr. Buckner. If I might answer Mr. Duncan's question about the GAO, our reading of that report tells us that there was, indeed, adequate medical evidence, according to GAO.

Their definition of adequate medical evidence is an X-ray. If you look at what the Congress did over the past several reforms in the black lung law, one of the reasons they included the other types of evidence, other than X-ray, was because, as Mr. Church pointed out in his testimony, thousands and thousands of coal miners who did not have X-ray evidence, the X-ray did not show the evidence, but they were clearly disabled, they couldn't pick up a brick and walk across the room, and based on the testimony of the American College of Radiologists, which represents the finest lung experts and radiologists in the country, they told the Congress that X-rays are clearly not adequate for determining disability.

As a matter of fact, you can't tell if a man's disabled by looking at an X-ray. All you can tell is if the man has any dust opacities. So the American College of Radiologists urged the Congress to adopt any and all other types of tests that could be applied to determine disability.

What they have done, they have come up with blood gas studies and ventilation studies. GAO evidently has determined that those are not adequate medical techniques. We disagree with that.

Mr. Duncan. You are willing to abide by the criteria that the American College of Radiology would recommend in determining black lung?

Mr. Buckner. What they recommended, Congressman, was that the law allow any and all types of tests that could be used, and we encourage——

Mr. Duncan. You encourage that we reexamine this entire matter of disability, and would you be inclined to go with their recommendation?

Mr. Buckner. Reexamine?

Mr. Duncan. The entire question of determining eligibility.

Mr. Buckner. Eligibility for black lung?

Mr. Duncan. Yes, sir.

Mr. Buckner. We think that the standards now are, if you look at the ventilation study criteria that were adopted last year, they are significantly more stringent than what they were.

Mr. Duncan. My question, though, concerns the debate as to whether or not we are using proper standards. Would you be willing for the group, that you just testified about, the American College of Radiologists, to reexamine the entire question?

Dr. Kerr. I don't think that your question is appropriate, Congressman, because of the fact that it's acknowledged that X-rays in no way determine disability. So that the American College of Radiology is not in a position to assess disability by X-rays.

What they were saying was that because of the inadequacy of X-rays in determining disability, they urge Congress to move forward on utilizing anything else that might be available. And that was what Congress proceeded to do.

Mr. DUNCAN. What do you think this would add to the cost of a ton of coal, the new tax that you are proposing?

Mr. BUCKNER. Well, if you look at the tax rates in the computer run that the Department of Labor has done, you are talking about 1 or 2 percent to the price of coal on a Btu basis.

Mr. DUNCAN. On the current rate, what would that be? What does coal sell for now?

Mr. BUCKNER. Anywhere between $25 and $40 a ton, depending on the type of coal that you are selling.

Mr. DUNCAN. I think that is all I have at this time, Mr. Chairman. I thank you and I would like to thank all three of you.

Chairman RANGEL. The committee is correct in assuming that the UMW has worked very closely with the administration in reaching these conclusions that you are recommending?

Mr. BUCKNER. We have met with the administration on a number of occasions, and the coal industry has been involved in those, as in some of the meetings, the insurance industry.

We have attempted to take a serious look at this, but I think the point that the UMW would like to make to the Congress is that we want the financial condition taken care of.

But to discuss eligibility changes in light of this burden hanging over the trust fund and the eligibility changes are a very minute part, I mean, if you did everthing proposed on this program, you still don't solve the problem this hearing is attempting to address.

Chairman RANGEL. The question of eligibility is not within the jurisdiction of this committee. But I had assumed that with all of these questions that you may have had, that there was not too much distance between you and the administration before they refused to testify this morning.

Mr. BUCKNER. Well, the meetings that we have had, we have never come to an agreement. We have discussed all——

Chairman RANGEL. If you haven't come to one before, you certainly haven't got one now.

Mr. BUCKNER. Yes, sir.

Chairman RANGEL. Tell me just for the record what is being done in the area of prevention. I always find so little testimony involved with that.

Mr. CHURCH. As we have said in our testimony, we are advocating that the coal miners do the dust sampling. There have been cases of fraud in the reporting of dust, respirable dust in the atmosphere, the tests that are taken.

Clearly, that is the answer, a good dust control program be put in place and administered by people that would not have something to gain by altering reports and so forth.

But again, it is another area that we are facing many problems in, and that is through MSHA, who knows a great deal of this dust control work.

Again, that is another area that is being cut. So we feel that the miners themselves would be in charge of making the tests and reporting them.

This, in effect, would be a true test and we would, by cutting down the dust, cut down the likelihood of the disease.

Chairman RANGEL. Are you doing that now with the miners?

Dr. **Kerr**. No, unfortunately, we are not. This was the proposal that was made to MSHA pretty near 3 years ago, and we still haven't had any response from them.

We feel that the miners should be participating with management in taking these samples. At the present time, it is the sole responsibility of management.

I think associated with this also is the fact that we do need a change in the X-ray program. I have been voicing this since 1969, but rarely does anybody listen. I have an opportunity this morning.

The only way that we can monitor what's happening as far as the dust program is concerned is by taking X-rays, chest X-rays of the working coal miners.

The dust levels may be too high. We don't know for sure. And the only way that we can determine whether we are getting no new cases of coal workers' pneumoconiosis and/or black lung is to at least start with the X-ray program.

All of the miners should be X-rayed, and they should be X-rayed by the U.S. Public Service or NIOSH.

This should be done with mobile equipment. It should be done taking pictures of one-fourth of the miners every year.

Chairman **Rangel**. Why shouldn't it be done by the industry?

Dr. **Kerr**. Because of the fact that they are only getting about 55 percent of the miners X-rayed at the present time, and because of the fact that the X-rays are having to be taken off of shift.

That is, the operator has an approved facility, a facility that's been approved by NIOSH, but it may be anywhere from 10 miles to, I have seen a couple of them that were as far as 85 and 90 miles away from where the miners live.

It is the miners' responsibility to then go and get his own X-rays taken. The operators, of course, pay for it. But nevertheless, if these X-rays were taken with mobile equipment at the workplace on shift, I would venture to say that we would be getting about 90 percent plus of the men X-rayed.

Chairman **Rangel**. Why can't labor demand in its contract that the industry have these mobile units where the people are working in order to——

Dr. **Kerr**. If you will pardon me, sir, I don't think management should have any right to see these X-rays, to read them or to classify them in any way, shape or form or manner.

Chairman **Rangel**. I am not talking about classification. I am talking about prevention.

Dr. **Kerr**. I am, too.

Chairman **Rangel**. What you are saying, that one way that you can get a handle as to the danger in the coal dust is by having an opportunity to read X-rays, just as a factor in terms of control.

Dr. **Kerr**. By having the Public Health Service take these X-rays, believe me, sir, the information would be taken back to management. It would be made available. But in no way would it identify the miner because of the fact that the miner so identified could in some way or other administratively be removed from his job.

This, of course, and I don't think you would want that to happen. We don't want——

Chairman **Rangel**. Removed from the job for medical reasons?

Dr. **Kerr**. Yes, I have seen it happen, plenty of times.

Chairman **Rangel**. Why wouldn't I want that to happen if a man was sick?

Dr. **Kerr**. Now, wait a minute. He has, you know, in the first stage, coal worker's pneumoconiosis X-rays, he has the right to move into a less dusty area.

This is what we are trying to get a hold of. See, at the present time, we don't know about a lot of these miners. They have a right to move. If they have any X-ray evidence of coal worker's pneumoconiosis, they can request the right to exercise their option to transfer to a less dusty area.

Chairman **Rangel**. If they get the X-ray and get a copy of the X-ray, wouldn't it help the miner to know what his physical condition is?

Dr. **Kerr**. The miner gets a copy of that report on every X-ray that is taken. He is told what the result is.

Chairman **Rangel**. For some reason, we got involved in some type of debate. Let's start all over.

You don't want management or the industry to give these X-rays.

Dr. **Kerr**. That's right, let them pay for it.

Chairman **Rangel**. OK.

Dr. **Kerr**. We don't want the men to lose their jobs.

Mr. **Buckner**. Mr. Chairman, if you have the industry do it, you are really not going to improve the situation because right now you may have a thousand different doctors taking these X-rays.

There is no uniformity in it. There is a problem of uniformity in the X-rays.

Chairman **Rangel**. Uniformity in the X-ray. You are talking about a picture. What is the difference who the photographer is?

Dr. **Kerr**. It makes an awful lot of difference, Congressman. It really does.

Chairman **Rangel**. If I am a coal miner and you are a mean old——

Dr. **Kerr**. Cantankerous X-ray man.

Chairman **Rangel** [continuing]. You give me my X-ray picture, what difference does it make?

Dr. **Kerr**. Yes, but if I am a mean, cantankerous doctor, I am not going to give it to you.

Chairman **Rangel**. Then we have been missing each other. Let me talk with the miner because, listen, all I am saying is that it would be great if your Government would give you the X-ray.

OK, you have heard the President's speech. We, your Government is saying it can't afford to get involved in these things, that the private sector is going to work it out.

You understand that. It means the Government is going to depend on the private sector to protect the people against disease and fraud, mismanagement and, you know, health and welfare and everything.

That is private sector. Now you may not like it, but if that is what we have to work with, would it do severe damage to the miners if it was mandatory that they take an X-ray and give that to the miner to determine not only his health, but to determine the safety hazards of that particular mine?

Dr. **Kerr**. He can ask to sign a request to have that information sent to whatever doctor he wants to when the X-ray is taken. He is perfectly free to indicate the name of the physician that he wants to receive this report. This happens at the present time.

Chairman **Rangel**. So why are you opposed to it?

Dr. **Kerr**. I am not opposed to that.

Chairman **Rangel**. Thank you very much. That's terrific.

Mr. **Church**. Mr. Congressman, as Dr. Kerr stated, this was something he wanted to expound on for several years. I guess as far as our expecting the Government at this time to foot the bill for all these X-rays, I guess it may be probably a fantasy at this time.

Chairman **Rangel**. All I am concerned with, it just seems to me that in so many areas that we are cutting back, that in the long run, we will be paying more.

I know that you agree with me, that if you could reduce the need for people to receive benefits, it saves the Federal Government's expenditure. What it involves is improved health and I am sure everybody would want that.

I am not that well-informed to determine what the X-ray will or will not do, but anything we can do to reduce deficit by improving the hazards which miners want, I am certain you would rather testify for that than to protect a few rights that you do have legislatively.

Dr. **Kerr**. Congressman, I wonder if I could send up to you a statement on this. It might help to clarify things.

Chairman **Rangel**. Thank you. I would welcome anything.

Dr. **Kerr**. I would be happy to come back and add if necessary.

Chairman **Rangel**. I think we all know where we are with the exception of the administration as to how to improve the trust fund and the benefits.

Dr. **Kerr**. Right.

Chairman **Rangel**. I just need, for my own personal satisfaction, some information as to what we are doing to prevent the disease. If you could share with me your views, I would welcome them.

Dr. **Kerr**. I would be very happy to, sir.

Chairman **Rangel**. Thank you, Mr. Duncan.

Mr. **Duncan**. That was what I was going to ask your permission, Mr. Chairman, that Dr. Kerr be permitted to submit a statement if he would like.

Chairman **Rangel**. The record would remain open. Staff would have some more specific questions for you.

Dr. **Kerr**. I would be very happy to come up anytime.

Chairman **Rangel**. Thank you so much for your testimony.

[The following was subsequently received:]

United Mine Workers of America,
Department of Occupational Health,
Washington, D.C., October 8, 1981.

Hon. Charles B. Rangel,
House of Representatives,
Washington, D.C.

Dear Chairman Rangel: Thank you for the opportunity to present testimony concerning the Black Lung Disability Trust Fund before the Subcommittee on Oversight. Your question on prevention was most appropriate and very welcome. In all the previous hearings on black lung, prevention has never been a topic for discussion.

The Congressionally mandated elimination of job-related death and disability can only be achieved when the miners fully understand the coal mine Act and their role in preventing disease and injury. There never will be sufficient money or trained personnel to have an inspector at the side of each miner. It is therefore imperative that a continuing program designed to achieve this goal be maintained.

The 52 UMWA safety division inspectors are currently in the process of completing an extensive course of training at the MSHA Academy in Beckley, West Virginia. This is to be followed with a NIOSH orientation at the NIOSH Appalachian Laboratory for Occupational Safety and Health in Morgantown, West Virginia. During the summer of 1973 the UMWA Department of Occupational Health conducted weekend one day meetings with more than 1,000 elected health and safety committeemen. These meetings were devoted solely to the health aspects of the federal coal mine Act. The ultimate objective is to have the capabilities of each of the Union inspectors expanded to include health in addition to safety in which they are already very versatile.

The NIOSH Health Hazard Evaluation program has identified and helped the Union in its efforts to control such hazards as carcinogens, skin irritants, excessive heat and cold exposures, and noise.

The Union has also played an important role in the development of essential regulations concerning the chest X-ray examination of the working miners. As stated in President Church's testimony there are three major measures required in the further development of a program designed to prevent black lung:

(1) NIOSH should make the chest X-ray examinations of all working coal miners.

(2) X-ray examinations should take place on shift rather than before or after work so that 90 percent or more of the miners will be examined regularly.

(3) Surface and auger miners should be included in the X-ray program.

Like all other job-related illnesses, black lung is a man-made disease which can be eliminated in one generation. The technology is not new; the use of ventilation and water has been well known for several decades.

In accordance with the 1969 coal-mine act the current level lof coal-mine dust is 2 mg. of respirable dust per cubic meter of air. The vast majority of underground sections and nearly all strip mines are reported to be in compliance with the 2 mg. standard. While a 1975 study by the General Accounting Office verified the need to improve the present dust-sampling technology and its use, it indicated there is no known method of dust-sampling to replace the one currently in use. The United Mine Workers of America is convinced that the dust-sampling program will attain its Congressionally mandated effectiveness only when operator responsibility is eliminated by a continuous automatic system joined with an automatic shutdown of mining equipment when the stipulated level of respirable dust is exceeded. Equally important is the active participation of the miners in the dust-control program. Only then will it be possible to overcome the miners' opposition to wearing the personal dust-samplers which they believe is the major source of inaccurate reporting. Rather than sampling the individual miner, as was the initial procedure, it was thought it would be more effective to sample the area where the miner is working. There is need for further research to determine a more accurate assessment of the dust levels in both underground and surface mines. Moreover, the current respirable dust level should be reduced to 1 mg.

During the 1969 hearings on the federal coal-mine bill Congress became aware that a dust-suppression campaign must be constantly evaluated. Dust measurement by itself is inadequate.

The only known method is periodic chest x-rays of the working miners. The development of new cases of coal workers' pneumoconiosis and progression of the disease provide convincing evidence of noncompliance with dust standards and the need to revise downwards the existing standards of 2 mg. Closely associated is the previously unknown but recently reported elevation of the standardized mortality ratio for lung and stomach cancer among U.S. coal miners. There is also a relatively new exposure to asbestos in some strip mines.

The x-ray of working miners further protects them by the early detection of such conditions as lung cancer and active pulmonary tuberculosis. In addition, a film exhibiting evidence of coal workers' pneumoconiosis provides the miner with the opportunity to exercise the option to be transferred to a less dusty area of the mine. This Congressional mandate in the 1969 coal-mine act was designed to prevent progression of coal workers' pneumoconiosis and thus reduce the likelihood of pulmonary disability.

The first two rounds of chest x-ray examinations of working miners were completed in 1974. The third round was initiated in 1979. In accordance with the 1969 coal-mine act the first two rounds were limited to the underground miners, of whom about seventy-five percent participated in the first round and fifty-five percent in the second round. This decrease can be largely attributed to the confusion generated by the differences in opinion concerning the validity and interpretation of x-rays and various tests required to establish a diagnosis of total disability due to black lung. Related factors have been the inordinate length of time required to secure approval of many black lung applications and the working miners' fear that there is a loss of confidentiality of their x-rays and related reports. It is important to note that the working-coal-miner films and reports are maintained under tight security at the Appalachian Laboratory for Occupational Safety and Health maintained by the National Institute for Occupational Safety and Health in Morgantown, West Virginia.

The third round of roentgenographic examinations is well advanced but includes only underground coal miners. Longstanding United Mine Workers of America efforts to include strip and auger miners continue to be nonproductive despite exposure of some of these miners to asbestos. The criteria for taking and reading the films have been strengthened. However, as with dust measurement, until operator participation is removed it will be impossible to relieve the miners' suspicions about the program. This can be best accomplished by having NIOSH totally responsible for the working-miner x-ray program. Twenty-five percent of the miners should be examined every year; the x-rays should be made on shift, and the operators should continue to pay the costs by reimbursing NIOSH.

The combination of more accurate dust measurements and high-quality comparable films will, for the first time, assure the adequacy of the information essential for eliminating the chronic pulmonary diseases which have plagued the coal-mining industry for decades.

A final preventive measure requires an intensified and expanded medical research program designed to solve some fundamental problems such as the precise role of coal-mine dust in the lungs, the cause and correct measurement of breathlessness on exertion, the value and effectiveness of various types of treatment, and the safe limit of total dust exposure. Only the federal government can conduct and support the in-depth unbiased research necessary to solve these problems. While Congress has slowly increased NIOSH appropriations, the funds are still inadequate to provide necessary services and conduct essential research. Until the annual NIOSH appropriations is more than twice the 1980 expenditure of $79 million, the ravages of job-related disability and death will continue to be the daily penalties paid for not preventing black lung and all other occupational diseases.

Please be assured of my willingness to be of all possible help in this matter.

Sincerely,

LORIN E. KERR, M.D., *Director.*

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Black Lung

by Lorin E. Kerr

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Black Lung

LORIN E. KERR

THE term *black lung* may be anathema to some, but it is now a well-known term with legal status. The revival in 1968 of this 150-year-old term brought coal workers' pneumoconiosis to nationwide attention, intensified a prolonged campaign to develop professional understanding of chest diseases among coal miners, and hastened the passage of state and national legislation.

At work coal miners are covered with dust. It's in their hair, their clothes, and their skin. It gets between their teeth and they swallow it. They suck so much of it into their lungs that until they die they never stop spitting up coal dust. Some cough so hard they wonder if they have any lungs left. Gradually the miners notice they are getting short of breath when they walk up hills. On the job they must stop work to catch their breath. Finally, just walking across the room at home is an effort.

Call it miner's asthma, silicosis, pneumonoultramicroscopicsilicovolcanoconiosis, coal workers' pneumoconiosis, or black lung—they are all dust diseases with the same symptoms.

Miners' asthma was first used in 1822 to describe the lung disease occurring among coal miners, and this phrase is still heard in some places. The cause of the spitting, coughing, and breathlessness in coal miners was unknown, so doctors used the well-known word *asthma* as a label to identify the condition. Later, silicosis became known as the disease producing breathlessness in the miner who had worked where silica was thought to be in the coal-mine dust.

Today, after years of research and study, we know that coal-mine dust itself can be the cause of spitting, coughing, and breathlessness in coal miners. One name of the disease produced is *coal workers' pneumoconiosis.* Another, better-known, name is *black lung.*

Coal workers' pneumoconiosis was the term British investigators used for the first time in 1942 to identify a type of dust disease observed in coal miners. The following year this disease, as distinct from, and in addition to, classical silicosis, became compensable in the United Kingdom. Like all occupational diseases, it is man-made and can be prevented.

Coal, for centuries, was dug out of surface outcroppings and shallow mines. In Britain this began about 1234. There was little dust and so there were no dusty lungs. This began to change, however, in the eighteenth century with the advent of the steam engine and a new method of smelting iron. The demand for coal increased rapidly and the mines got deeper and deeper as some problems of ventilation, lighting, and flooding were solved. While black "spittle" and black pigmentation of lungs were observed during the seventeenth and eighteenth centuries, it was not until 1831 that *black lung* was the term used for the first time in a report describing the lungs of a Scottish coal miner. From then until the end of the nineteenth century, coal-mine dust was generally acknowledged in Europe to be the cause of the black lungs and the shortness of breath occurring among coal miners. In 1880 Émile Zola, in his famous novel about French coal miners, *Germinal*, wrote eloquently about the devastating effect of black lung.

In the early years of the twentieth century efforts to suppress coal-mine dust subsided. It was claimed by industry that improved ventilation in the coal mines had virtually eliminated black lung. Some medical "experts" claimed that coal dust was possibly beneficial. This medical denial of the danger of coal-mine dust has continued throughout the years to be the position of company-oriented physicians motivated by a desire to save money for industry.

The main reason for less concern about the danger of coal-mine dust was the attention devoted to silica and silicosis, beginning in 1902. Silica soon became labeled in scientific journals as the most harmful industrial dust, and silicosis as the only important dust disease. Its importance was underscored because pulmonary tuberculosis was a usual complication and frequent cause of death. However, there was little public discussion until 1932. Then silicosis made the headlines and there was wide technical discussion in the United States and other countries. This was not due to sudden realization of a health hazard, but rather to realization of an economic "hazard" for some industries.

Workers were glad to get jobs in 1930 at Hawk's Nest tunnel near Gauley Bridge, West Virginia. Many never returned to their homes. One witness, at the 1936 Congressional investigation of the 476 deaths reported during two years of construction, told of three sons who died of silicosis within thirteen months after starting to work in the tunnel. Efforts to secure worker's compensation benefits for any of the Gauley Bridge victims, living or dead, were most often unsuccessful.

In accordance with a joint resolution by the U.S. Senate and House of Representatives, Secretary of Labor Frances Perkins called the First National Silicosis Conference in 1936. The experts worked in five committees for ten months and submitted their report to Secretary Perkins early in 1937. Many states subsequently added silicosis to the limited list of occupational diseases covered by worker's compensation. But the definition of silicosis and the qualifying requirements were so restrictive that few victims ever received benefits.

ADVANCES IN GREAT BRITAIN

British investigators, unlike Americans, continued their concern for diseases associated with coal-mine dust. By 1927 British doctors were reporting chest x-ray differences between silica and coal-mine dust exposure. Worker's compensation legislation was changed three times before British coal miners disabled by silicosis were finally able, in 1934, to receive limited awards. However, the number of men receiving benefits was a small percentage of all the disabled miners who were examined. Their disability was acknowledged, but the British doctors said it was not caused by silicosis. Deeply concerned about the increasing number of these disabled miners, the British Medical Research Council, a counterpart of the U.S. Public Health Service, initiated in 1937 a comprehensive study of chronic pulmonary disease in south Wales coal miners.

The first report in 1942 identified a "new" dust disease which the British investigators called *coal workers' pneumokoniosis*. The following year this "new" disease became compensable. Coal workers' pneumoconiosis is now generally considered to be a diagnosable occupational dust disease. It is reported to show characteristic chest x-ray changes which have been observed in workers exposed to anthracite or bituminous coal-mine dust and some other carbon dusts both in Britain and the United States. Lung changes observed after death are specifically characteristic.

Coal workers' pneumoconiosis is not really a new disease. It has been reported in every coal-mining country in the world, first as black lung, more recently as coal workers' pneumoconiosis, and finally once more as black lung.

The British Medical Research Council in 1945 established a Pneumoconiosis Research Unit near Cardiff, Wales; its contributions have played a major international role in the diagnosis and prevention of the disease.

The International Labour Organization (ILO), an affiliate of the United Nations, has conducted several meetings of international experts on coal workers' pneumoconiosis. In 1950, they accepted with minor modifications a standardized method of describing and classifying the x-ray changes developed by British investigators. This International Classification was further refined in 1958 and more recently in 1968, and the standardized x-rays and photographs illustrating the Classification are available from the ILO. International scientific cooperation by agencies including the U.S. Public Health Service is responsible for the two most recent revisions known as the ILO-U/C 1971 Classification of Radiographs of Pneumoconioses and the ILO 1979 International Classification of Radiographs of the Pneumoconioses.

The British National Coal Board has made significant progress in the prevention of coal workers' pneumoconiosis. In 1955 nearly 5000 new compensation awards were granted for this disease. By 1965 this number dropped to 1007, and to 539 in 1974. With enhancement of the compensation arrangements in 1974 the new awards increased to 683 in 1975 and 575 in 1976. This was largely due to the marked rise in ex-miners who were certified in 1974, 1975, and 1976, in comparison with earlier years. On the other hand, the annual reports of the Board including the most recent one for 1975–76 indicate a reduction in the percentage of British miners with x-ray evidence of this disease.

AMERICAN INACTION

Countless reports on coal workers' pneumoconiosis have been made in British medical journals but relatively few appeared in the United States before 1969. Despite five major medical conferences beginning in 1952 in Elkins, West Virginia, the disease was not widely recognized in the United States. America's lack of concern was due, in part, to a belief that conditions reported worldwide did not exist in the United States. There was also the mistaken conviction about silicosis. This confusion was compounded by a lack of precise knowledge concerning the effects of coal-mine dust, a condition that still prevails. Then there were and still are to a lesser degree the attitudes and influence of employer-oriented physicians who avoid facing known facts about the ravages of coal-mine dust in human lungs. These things needlessly delayed implementation of feasible dust suppression measures and the enactment of essential compensation legislation.

Efforts of the United Mine Workers of America to secure corrective legislation were nearly always fruitless. A glimmer of hope appeared in

1952 when Alabama became the first state to provide compensation for coal workers' pneumoconiosis. A few years later Virginia recognized the disease as compensable, but pressures were exerted the following year and the amendment was repealed. Pennsylvania enacted legislation effective on December 1, 1965, and Virginia again amended its compensation law in 1968.

In the almost universal absence of compensation coverage for medical benefits, payments by the UMWA Welfare and Retirement Fund for the diagnosis, treatment, and rehabilitation of miners afflicted with this preventable disease amounted to millions of dollars. These disabled miners had more respiratory infections than other miners, and their infections lasted longer. Some of these men became so ill with upper respiratory infections that they required hospitalization for two or three weeks several times every year. Confronted with a mounting toll of pulmonary cripples, the Fund embarked in 1952 on a twelve-point program designed to develop professional understanding of pulmonary diseases among coal miners.

A final comment on our thirty-year lag behind the British prior to 1969 is provided by Dr. Donald Hunter, the world-famous British authority on occupational health. In 1959 in his book *Health in Industry* he wrote extensively on coal workers' pneumoconiosis. He said that although coal had been mined in Britain for 700 years, it was not until 1934 that British physicians began to accept the fact that coal-mine dust in miners' lungs produces a slowly progressive fatal disease. Hunter went on to say: "It must be admitted that medical men by their ill-informed complacency have a heavy load of responsibility to bear for this failure to discover the true state of affairs, a failure which constitutes what is probably the greatest disgrace in the history of British medicine." In 1968 American medicine had barely begun to overcome its "ill-informed complacency" and "discover the true state of affairs" regarding coal workers' pneumoconiosis.

LEGISLATION

On November 20, 1968, the nation was numbed by the sight and fury (for the first time on television) of a devastating coal-mine explosion at Farmington, West Virginia. The public reaction to this slaughter of seventy-eight miners was immediate and violent. Overnight there was an outraged clamor for a strong federal law. The clamor wiped out long-standing barriers which the pleas of the miners and their union had previously been unable to tear down. The public and Congressional campaign to try to eliminate the daily toll of coal-mine accidents soon included the equally destructive losses due to dust diseases. While earlier legislative achievements were also preceded by major mine disasters with great loss of life, the reaction to the 1968 disaster grew to a fervent intensity never witnessed before.

The outgoing Johnson administration, following a mid-December meeting called by the U.S. Department of the Interior to plan corrective legislative action, agreed to endorse strong coal-mine-dust prevention measures, such as the union recommendation for an initial standard of 3 mg. of respirable dust per cubic meter of air. In rapid succession during January 1969 two bills were introduced in Congress.

In southern West Virginia, several months before the Farmington disaster, some interested coal miners, VISTA volunteers, poverty agency lawyers, and three physicians—I. E. Buff, Donald R. Rasmussen, and Hawey A. Wells, Jr.—toured the coal fields. They met in schools and union halls with groups of working and disabled miners and their wives and widows, explaining the death and disability caused by black lung. Late in 1968 a number of miners organized the West Virginia Black Lung Association which successfully led a campaign to introduce a bill in the 1969 session of the West Virginia legislature making coal workers' pneumoconiosis a compensable disease. A somewhat similar bill was also introduced by the United Mine Workers of America. The former bill was quickly made a major issue by the Black Lung Association and militant miners in February when the legislation ran into opposition from the coal-operator-dominated legislature. Most of the 40,000 miners in West Virginia walked out of the mines, and a large number of them marched on the state capitol in Charleston demanding passage of the bill. Three weeks later, after the governor signed the bill, all the miners went back to work. This was one of the largest and longest strikes ever called on the single issue of occupational health. This strike played a vital role in the ultimate passage of similar legislation in three more states in 1969 and one in 1971, and the enactment of the Federal Coal Mine Health and Safety Act of 1969.

Although coal workers' pneumoconiosis was the only disease mentioned in all the state and federal statutes, Congress legalized the term *black lung* as a synonym for that disease in Title IV of the coal-mine act, which is entitled "Black Lung Benefits." The act is historic. The precedent it established played a major role in the enactment of the Occupational Safety and Health Act of 1970.

In the coal-mine act, Congress for the first time mandated that an occupational disease occurring in a major industry must be eradicated. To prevent and control the disease the act stipulated, in Title II, the dates on which decreasing levels of respirable dust occurring in the coal mines must become effective; it also directed periodic chest x-ray examinations of working miners. Coal workers' pneumoconiosis was diagnosed largely on the basis of the British experience; it was dependent on the number, size, and distribution of dust opacities in a chest x-ray and a work history indicating employment in the coal-mining industry.

Congress also recognized that coal workers' pneumoconiosis had produced so many victims that no state or coal company had resources to cope with even partial benefits. In all the 1969 testimony only one witness estimated a number approximating what is now an acknowledged fact—at least 365,000 victims—and his figures were discounted as too high. Congress maintained these people had already waited too long; immediate action was a necessity. Title IV stipulated how this was to be accomplished and provided the only definition of the disease in the act, which reads as follows: "The term 'pneumoconiosis' means a chronic dust disease of the lung arising out of employment in an underground coal mine."

BLACK LUNG BENEFITS

Initially, Congress directed the Social Security Administration (SSA) to administer the federal black lung benefits program. Payments were made from the general treasury, not the Social Security Trust Fund. The law clearly stipulated that federal black lung benefits were not worker's compensation and the program was not to be so administered. At no time did the adversary relationship characteristic of worker's compensation appear in the SSA proceedings.

A working miner was not eligible to receive the benefits until such time as he quit work and it was further determined that he was totally disabled. It is thus impossible to relate in any way the cost of the SSA program to the 205,000 coal miners working today. Those receiving benefits were disabled by unnecessary exposure to coal-mine dust during at least the last thirty years when it is thought that more than one million men had worked some time in the coal-mining industry. While several thousand widows of men whose death could be attributed to coal workers' pneumoconiosis, and totally disabled miners with lung opacities began to receive benefits, it soon became evident that there were thousands more who were equally disabled but were denied payment because they had no x-ray evidence of dust opacities. The coal-mine act was finally amended in 1972 to provide some of these men with coverage. This amendment meant that the term *black lung* is generic and in addition to coal workers' pneumoconiosis includes dust-induced bronchitis and emphysema. The Black Lung Benefits Act of 1972 specified among other things that no application shall be denied solely on the basis of a negative x-ray, and that surface miners would also be eligible for benefits.

When the Social Security Administration ceased operation of the black lung benefits program on July 1, 1973, nearly 600,000 applications had been filed. Of this number about 230,000 totally disabled miners and 145,000 widows were approved for federal black lung benefits. Since the inception of the SSA program on December 30, 1969, more than 90,000 of these disabled miners have died; only 140,250 were still living as of February 1979. It is likely that half of these deaths can be attributed directly to the chronic pulmonary diseases occurring among coal miners. This means that more than eleven men every day wheeze away their lives as the penalty for mining coal to earn a living. Were the seventy-seven deaths a week to occur all on the same day in the same place—remember the Farmington disaster and its seventy-eight victims—the nation would undoubtedly demand immediate and universal compliance with mandated dust standards. Undoubtedly, the standards would be made stricter.

Congress stipulated that the black lung benefits shall be paid at a rate equal to fifty percent of the minimum monthly payment made to a totally disabled federal employee in Grade GS-2. Widows are paid at the same rate. The payment is increased fifty percent for one dependent, seventy-five percent for two, and one hundred percent for three or more. Initially, the miner or widow received $144.50 monthly, and with three or more dependents the total was $288.90. Due to federal supplemental cost-of-living increases these monthly payments through September 30, 1979, are $232 for the miner or widow and $463.90 when there are three or more dependents. From 1970 through February 1979 the total black lung benefit payments approved by the Social Security Administration amounted to $7,044,348,600. In 1973 payments amounted to $1,079,314,000. The current expenditure of somewhat less than $1 billion a year is scant recognition of the long years of neglect the miners have endured. The payments to the living survivors of decades of uncontrolled coal-mine-dust exposure can never equal worker's compensation payments which should have been initiated at least as long ago as 1943 when Britain first provided such coverage. The federal costs will decrease with the gradual demise of the widows and the totally disabled miners.

The 1969 act as amended in 1972 advanced the date the Department of

Labor would assume responsibility for the black lung benefits program from July 1, 1972, to July 1, 1973. However, there was no change in the initial stipulation that the Department of Labor program is worker's compensation with its attendant adversary relationship between the miner and the coal-mine operator. This program is now worker's compensation with an adversary vengeance rarely encountered.

Unfortunately, the Black Lung Benefits Act of 1972 left many claimant problems unresolved. Foremost was the inability of the Department of Labor to process claims expeditiously. A General Accounting Office study indicated that the average length of time for processing a claim was 645 days. In the four years between July 1, 1973, and early 1977, the Department of Labor received more than 106,700 new black lung claims of which about 53,500 were disallowed and 49,200 were pending. Only 4000 claims had been approved. Of those, approximately sixty percent (2400) were receiving federal black lung benefits because the Department of Labor had been unable to locate the last employer. The last employer had been located for the remaining forty percent (1600) and the Department authorized federal payment of benefits for all of them except for 138 who were being paid by the employer. For various reasons the responsible operators were contesting their payment of the other 1462 claims, or 91.4 percent of the total.

Congress again amended the Federal Coal Mine Health and Safety Act of 1969 with the enactment of the Black Lung Benefits Reform Act of 1977 on March 1, 1978. The law removed certain eligibility restrictions that had prevented many coal miners with black lung (and survivors) from obtaining benefits. The definition of pneumoconiosis was expanded to include any other respiratory and pulmonary impairment arising out of employment in or around coal mines, and the term *miner* now included those who worked in coal-preparation plants or were employed in coal-mine construction or transportation. Medical benefits for the treatment of lung disorders were made available from the Department of Labor for eligible federal black lung recipients. The new law also stipulated that the coal-mine operators must assume a greater share of the cost of financing the Black Lung Benefits Program. This is accomplished by a Black Lung Disability Trust Fund supported by excise taxes on coal-producing companies. The 1977 reform act also made the benefit program permanent by eliminating the earlier termination date of 1981.

During the sixteen months following the Presidential signing of the reform act on March 1, 1978, the Department of Labor approved 2265 new claims, 3022 claims previously denied by the Social Security Administration, and 2531 denied by the Department of Labor; it also issued identification cards for medical benefits to 60,360 applicants. While the Department of Labor now required less time to initiate benefit payments, the operators continued to contest a high percentage of approved claims. It is estimated that 138,000 persons will be receiving the black lung benefits financed by the trust fund by the end of fiscal 1980, including 80,000 who will be receiving medical benefits only. This compared with 69,506 who were receiving benefits as of April 30, 1979, including 53,340 who were receiving medical benefits only.

No state worker's compensation legislation has yet been approved to comply with the federal standards specified in the 1969 coal-mine act as amended. It is extremely doubtful that such action will ever occur, certainly not in the absence of a compelling reason such as the loss of specific federal funds.

This underscores the need for national worker's compensation stripped of the usual adversary relationship for all workers. A federal agency should be responsible for determining disability with payment for wage losses and all medical care made from a national fund maintained by payments from management. Only in this manner will it be possible to resolve the thorny problems posed by honest differences of medical opinion, many of which are due to a lack of so-called objective evidence. The interpretation of x-rays is completely dependent on personal opinion, which, despite a high degree of integrity, is subjectively objective. While physiologic tests can indicate probable pathology, a determination of the etiology requires a knowledge of the job-related health exposures, and even then the final arbiter—an autopsy—may reveal totally new and unsuspected etiological factors.

It should be noted that the coal-mine owners have unsuccessfully used the black lung benefits section of the federal coal-mine act on two different occasions to test the constitutionality of the law before the U.S. Supreme Court. Equally lamentable is the fact that about sixteen percent of working miners exhibit x-ray evidence of coal workers' pneumoconiosis. Only a relatively small proportion of these miners may eventually become disabled, varying from slight breathlessness on effort in the early stages of black lung to severe shortness of breath. Premature death is preceded by total incapacity for work in the advanced stages. Coal-mine dust is a killer, but death comes slowly.

Alarming as all the black lung statistics are, it is important to realize that every one of the thousands listed in some report or study is a human being whose lungs have been diseased and disabled as the penalty for mining the nation's vitally needed coal for a living. It is small consolation for a miner with black lung to know that he is "only" one out of a group of five or ten who are so afflicted. Every figure represents a coal miner who is paying a dreadful price for his long years of service in the mines.

TREATMENT PROGRAMS

Since 1973, Congress has annually appropriated about $5.2 million for the National Institute for Occupational Safety and Health (NIOSH) to provide services in accordance with the 1969 coal-mine act as amended. Approximately fifty percent of these funds was devoted to research on the occupational dust diseases occurring among coal miners. While the 1972 black lung amendments authorized $10 million for treatment for each of three years, only $3.5 million was appropriated in 1973. Of the $3.5 million finally appropriated, $2.3 million was granted by NIOSH to seven Appalachian coal-mining states and Illinois for the development of black lung treatment programs. This was combined in the seven eastern states with comparable sums from the Appalachian Regional Commission. NIOSH signed a contract for the remaining $1.2 million with the United Mine Workers of America, which through its Department of Occupational Health developed a total of nine treatment centers in six westerly coal-mining states. The union's Department of Occupational Health was also the state-designated agency responsible for the development of eight centers in Tennessee and eastern Kentucky. The total funding for these two states amounted to an additional $750,000.

The purpose of these programs was to make recent developments available to disabled miners who previously were ignored or forgotten until their illness or pulmonary infection forced them into a hospital. The treatment programs were designed to keep the disabled men in a vertical position rather than delaying care until they were horizontal in a hospital bed. Success demanded that the treatment must also be an integral part of the total medical care the miner received. It is impossible to relieve breathing distress in the absence of therapy for other illnesses such as diabetes, hemorrhoids, or gallstones. Never before had the diagnosis and treatment of black lung been associated with an organized outreach program which was the new major ingredient in therapy. The sick and disabled miners regained a measure of comfort and dignity from these treatment programs.

The combination of fiscal benefits and treatment is essential for providing relief for those disabled by black lung.

The Black Lung Benefits Reform Act of 1977 authorized $10 million each year for the evaluation and treatment of miners suffering from black lung. The 1979 fiscal year appropriation was reduced to $7.5 million and added to the Health Services Administration budget. The money was made available to those agencies designated to receive such funds by state governors.

PREVENTION OF BLACK LUNG

Equally important, however, is the prevention of black lung. Like all other job-related illnesses, black lung is a man-made disease which can be eliminated in one generation. The technology is not new; the use of ventilation and water has been well known for several decades.

In accordance with the 1969 coal-mine act the current level of coal-mine dust is 2 mg. of respirable dust per cubic meter of air. The vast majority of underground sections and nearly all strip mines are reported to be in compliance with the 2 mg. standard. While a 1975 study by the General Accounting Office verified the need to improve the present dust-sampling technology and its use, it indicated there is no known method of dust-sampling to replace the one currently in use. The United Mine Workers of America is convinced that the dust-sampling program will attain its Congressionally mandated effectiveness only when operator responsibility is eliminated by a continuous automatic system joined with an automatic shutdown of mining equipment when the stipulated level of respirable dust is exceeded. Equally important is the active participation of the miners in the dust-control program. Only then will it be possible to overcome the miners' opposition to wearing the personal dust-samplers which they believe is the major source of inaccurate reporting. Rather than sampling the individual miner, as was the initial procedure, it was thought it would be more effective to sample the area where the miner is working. There is need for further research to determine a more accurate assessment of the dust levels in both underground and surface mines. Moreover, the current respirable dust level should be reduced to 1 mg.

During the 1969 hearings on the federal coal-mine bill Congress became aware that a dust-suppression campaign must be constantly evaluated. Dust measurement by itself is inadequate. The only known method is periodic chest x-rays of the working miners. The development of new cases of coal workers' pneumoconiosis and progression of the disease provide convincing evidence of noncompliance with dust standards and the need to revise downwards the existing standard of 2 mg. Closely associated is the previously unknown but recently reported elevation of the standardized mortality ratio for lung and stomach cancer among U.S. coal miners. There is also a relatively new exposure to asbestos in some strip mines.

The x-ray of working miners further protects them by the early detection of such conditions as lung cancer and active pulmonary tuberculosis. In addition, a film exhibiting evidence of coal workers' pneumoconiosis provides the miner with the opportunity to exercise the option to be transferred to a less dusty area of the mine. This Congressional mandate in the 1969 coal-mine act was designed to prevent progression of coal workers' pneumoconiosis and thus reduce the likelihood of pulmonary disability.

The first two rounds of chest x-ray examinations of working miners were completed in 1974. The third round was initiated in 1979. In accordance with the 1969 coal-mine act the first two rounds were limited to the underground miners, of whom about seventy-five percent participated in the first round and fifty-five percent in the second round. This decrease can be largely attributed to the confusion generated by the differences in opinion concerning the validity and interpretation of x-rays and various tests required to establish a diagnosis of total disability due to black lung. Related factors have been the inordinate length of time required to secure approval of many black lung applications and the working miners' fear that there is a loss of confidentiality of their x-rays and related reports. It is important to note that the working-coal-miner films and reports are maintained under tight security at the Appalachian Laboratory for Occupational Safety and Health maintained by the National Institute for Occupational Safety and Health in Morgantown, West Virginia.

The third round of roentgenographic examination is well advanced but includes only underground coal miners. Long-standing United Mine Workers of America efforts to include strip and auger miners continue to be nonproductive despite exposure of some of these miners to asbestos. The criteria for taking and reading the films have been strengthened. However, as with dust measurement, until operator participation is removed it will be impossible to relieve the miners' suspicions about the program. This can best be accomplished by having NIOSH totally responsible for the working-miner x-ray program. Twenty-five percent of the miners should be examined every year; the x-rays should be made on shift, and the operators should continue to pay the costs by reimbursing NIOSH.

The combination of more accurate dust measurements and high-quality comparable films will, for the first time, assure the adequacy of the information essential for eliminating the chronic pulmonary diseases which have plagued the coal-mining industry for decades.

A final preventive measure requires an intensified and expanded medical research program designed to solve some fundamental problems such as the precise role of coal-mine dust in the lungs, the cause and correct measurement of breathlessness on exertion, the value and effectiveness of various types of treatment, and the safe limit of total dust exposure. Only the federal government can conduct and support the in-depth unbiased research necessary to solve these problems. While Congress has slowly increased NIOSH appropriations, the funds are still inadequate to provide necessary services and conduct essential research. Until the annual NIOSH appropriation is more than twice the current expenditure of $79 million, the ravages of job-related disability and death will continue to be the daily penalties paid for not preventing black lung and all other occupational diseases.

One of the avowed precepts of our government has always been the protection of property. In fact it has long been recognized as a right extended to all citizens. This right of the people to have their property protected is essential for protecting the home and the place of business. Of more recent date this protection as a right has been extended to include health. This was necessary because the maintenance of good health and the ability to work is the only property workers have to assure economic sustenance. Thus government has the responsibility to take all possible steps to protect the workers' health; this is their property. Loss of this property through illness increases governmental expenditures at some point. Prudence certainly indicates that job-related illness must be avoided if government is to fulfill its obligation.

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Chairman RANGEL. From the National Coal Association, we have the president with us this morning, Mr. Carl Bagge. He will have with him their legislative representative and counsel, Bruce Watzman and Mark Solomons.

STATEMENT OF CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION, ACCOMPANIED BY BRUCE WATZMAN, LEGISLATIVE REPRESENTATIVE, AND MARK SOLOMONS, COUNSEL

Mr. BAGGE. Mr. Chairman, members of the committee, my name is Carl Bagge. I am president of the National Coal Association, a trade association representing most of the Nation's major coal producers, as well as many other companies associated with the coal industry.

With me this morning is Mark Solomons, an attorney with the Washington firm of Kilcullen, Wilson & Kilcullen, and Bruce Watzman, a legislative representative on my staff at the National Coal Association.

Mr. Chairman, on numerous occasions I have appeared before both House and Senate committees to present the position of the coal industry relative to legislation intending to reform the black lung program.

Regretably, the result of these reform efforts has been to widen the door to abuses that discredit a meritorious program and jeopardize the position of legitimate claimants.

What started as a justified effort to compensate victims of pneumoconiosis not covered by State programs has resulted in a Federal supplemental pension program for miners and their survivors.

Mr. Chairman, let me state unequivocably that the coal industry does not object to paying benefits to those who are truly disabled by complicated pneumoconiosis. This was the intent of the original legislation adopted by the House in 1969, however, as my testimony enumerates, without supportive medical evidence, the legislation was broadened during conference consideration to provide benefits to those suffering from both simple and complicated pneumoconiosis.

Further, legislative changes adopted in 1972 and 1977 have transformed the program into one which provides benefits absent a medical determination that a claimant is truly suffering from pneumoconiosis or is truly disabled by the disease.

With this in mind, Mr. Chairman, I would like to outline how the program developed to where it is today and what effect this has had on the operation and financial stability of the black lung disability trust fund.

The Federal black lung program was initiated in 1969 as title IV of the Coal Mine Health and Safety Act. It was designed to provide benefits to miners totally disabled due to pneumoconiosis arising out of coal mine employment and for survivors of miners whose death was a result of the disease.

Its sponsors assured their colleagues that it was to be:

> * * * a one-shot effort. This [program] is not a continuing compensation arrangement to establish Federal-based compensation for this or any other industry. We are not only taking on those who are not afflicted with pneumoconiosis in its fourth stage—complicated pneumoconiosis * * *
>
> However, this is only one shot. I want to say this today and I want to have it placed on the record indelibly * * *

Remarks of Hon. John Dent, page H10047, Congressional Record, October 27, 1969.

The bill was introduced and enacted at a time when few States compensated disabled victims of pneumoconiosis and when no State provided such compensation to miners or survivors of miners who had retired from mining prior to enactment of the State law.

The first relaxation of eligibility standards occurred in the original act which created three presumptions to aid miners and their survivors in establishing claims. The bill finally enacted differed in one material respect from the one presented to the House and explained by Congressman Dent in that it provided compensation to claimants who exhibited symptoms at any stage of the disease, in spite of the fact that only in its most serious form, progressive massive fibrosis [PMF], is it progressive, totally disabling and eventually, fatal. The Surgeon General testified to this fact and stated that "simple pneumoconiosis seldom produces significant ventilation impairment * * *."

Medically, pneumoconiosis is divided into two categories, complicated and simple, neither of which is statutorily defined. Complicated [or progressive massive fibrosis, PMF] is the advanced stage of the disease and involves substantial fibrotic reaction of the lungs to dust deposits. The complicated stage produces marked pulmonary impairment and severe disability, especially in later years.

Simple pneumoconiosis, however, is a less advanced form of the disease than complicated. It is not considered disabling and is "seldom productive of significant respiratory impairment."

In 1972, Congress greatly expanded the eligibility criteria of the act for a second time by adding a new presumption of eligibility based on coal-mining exposure of 15 years or more, extending eligibility for survivor benefits to survivors of miners who died from causes other than pneumoconiosis and made several additional changes in evidentiary and eligibility requirements. The new 15-year presumption was and is of particular concern to the coal industry in that no medical evidence has shown a clear causal relationship between duration of employment and the incidence of disability due to pneumoconiosis.

Supporting this contention was testimony presented by the Surgeon General, who stated, "the occurrence of pneumoconiosis is spotty for work periods of less than 15 years." (S. Rept. No. 743, 92d Congress.) Further, the National Academy of Sciences in testimony before the Senate Subcommittee on Labor stated, "at best, the evidence presented to Congress indicates that it takes 10 to 15 years of underground mining for coal miners even to begin to develop coal worker's pneumoconiosis."

Against this background, Congress in 1977 amended the act for a third time by expanding the eligibility requirements, including:

Pneumoconiosis which was previously defined as a chronic dust disease of the lung arising out of coal mine employment was broadened to include "respiratory and pulmonary impairments, arising out of coal-mine employment."

"Miner" was broadened to include certain transportation and construction workers as well as employees of coal-mining companies who were not engaged in coal-mining activity.

"Total disability" was broadened, enabling those still capable of work, those who voluntarily retired from coal mining or those still working to qualify for benefits, in many instances on the basis of advanced age alone.

These redefinitions have resulted in a truck driver, a weightmaster, a laboratory technician, a carpenter, a molder in a company foundry qualifying under the definition of "miner," even though they had no experience underground.

Chairman **RANGEL**. I have heard this accusation so much. I understand you are saying they should not be eligible for benefits, but are you also implying they are healthy?

Mr. **BAGGE**. I am asserting two things: I am questioning their eligibility for their benefits in the first instance; and second, we are questioning whether or not people who work in foundries, laboratory technicians, around coal could have advanced stages of pneumoconiosis. We are questioning it on both grounds.

Chairman **RANGEL**. You are not disputing whether or not some people that have respiratory diseases got it because they worked in the mines or around the mines; you are also saying there are some people who have no respiratory disease.

Mr. **BAGGE**. That they are qualifying under the program, yes, sir; that is what we are saying.

Chairman **RANGEL**. Where could you go to verify that type of testimony?

Mr. **DUNCAN**. It is in the law.

Chairman **RANGEL**. I assumed that even with all these presumptions, you had to have medical evidence involved, unless you are dead. If you are living and you apply for benefits, while there are presumptions that could be debated, you still need some medical evidence that there is something physically wrong with you. Is that so?

Mr. **BAGGE**. We wish that were the case, Mr. Chairman, but that is not always so.

Chairman **RANGEL**. So it is your testimony that under existing law and regulations, a healthy person could find themselves eligible for black lung benefits just based on presumptions of employment at sites.

Mr. **BAGGE**. Exactly. The philosophy underlying this is there was 100 percent correlation between working in the mines and advanced stages of pneumoconiosis and there is no medical evidence to support that contention. That is what underlies this legislation.

Chairman **RANGEL**. When you say no medical evidence, you mean "none." You don't mean lack of substantive medical evidence. You mean that just based on presumptions, based on employment, that it is possible under existing law to receive a disability check when, in fact, there was no medical evidence admitted to indicate that disability.

Mr. **BAGGE**. There are cases like that. That is what we are asserting. You could have an affidavit of evidence.

Chairman **RANGEL**. I am not talking about anyone that is dead. That is when the affidavit comes in. I am talking about someone that is healthy. You are saying there are cases where healthy people that worked for the industry for a number of years, that the

15-year presumption in the industry does not require any medical evidence at all. I am not talking about phony medical evidence.

Mr. BAGGE. That is my contention.

I will ask Mark Solomons to elaborate on that.

Mr. SOLOMONS. If you would like a resource to review, I would recommend that you look at the 1977 testimony of Social Security Administration medical officials who testified in connection with the standards and presumptions which were then being considered.

If I may quote from one of the chief medical officials at the Social Security Administration, he said with respect to the standards which were openly adopted in 1977 and 1978 that 95 percent of all knowledgeable physicians would consider these normal in the vast majority of cases. These were the standards that are in place and are being used and have been used for the last 3 years under this program.

Chairman RANGEL. Say that again.

Mr. SOLOMONS. He said 95 percent of all knowledgeable physicians would consider these standards not to be abnormal.

Chairman RANGEL. That is a little different from what I am asking the president here. You are saying physicians have differed with the quality of the medical evidence submitted.

Mr. SOLOMONS. No, sir. I am talking about the standards themselves, not the quality. That is the specific criteria which are set down in the regulations mandated in the 1978 act.

Chairman RANGEL. You are saying that criteria requires no medical evidence.

Mr. SOLOMONS. There is medical evidence that is required in order to invoke those standards. What I am saying is evidence which invokes the standards is inadequate to detect disability or total disability in an individual.

Chairman RANGEL. So you are saying that the medical evidence is inadequate, but there is medical evidence.

Mr. SOLOMONS. Yes.

Chairman RANGEL. Mr. President, you are saying that it is your understanding that no medical evidence is necessary when certain presumptions are made as relates to the applicants or the claimants.

Mr. BAGGE. That was a shorthand way of saying the same thing.

Chairman RANGEL. There is a difference in my question.

Mr. SOLOMONS. In some instances that is the case. You are dealing with a whole array of criteria.

Chairman RANGEL. If you are talking about bad medical evidence, I will refer that to the proper committee. When your testimony becomes clearly that the truck drivers are receiving disability pay based on presumption, I am assuming that this truck driver is not ill, the way your testimony flows. There is nothing wrong with his chest and he did not have to bring in any medical evidence at all. He merely says, "I worked for the coal industry; give me my check," and that is the way the testimony flows.

I think what we are saying with clarification is that you don't believe that the regulations require a high standard of proving medical disability, coupled with the presumptions that you would like to take a whole new look at.

Mr. BAGGE. Exactly.

Finally, a new 25-year presumption was added, the Labor Department was directed to reexamine all claims which had been denied prior to March 1, 1978, and language was adopted to limit the Government's ability to re-read X-rays.

This last point is of particular concern since the X-ray is regarded as the best evidentiary tool for diagnosing pneumoconiosis in a living miner. This change in the law required the Secretaries of HHS and DOL to accept a local reader's X-ray diagnosis even though testimony presented before the Senate Subcommittee on Labor stated that local doctors often mistook another lung disease for pneumoconiosis or completely overlooked the presence of a separate disease when interpreting X-rays.

Lastly, the 1977 amendments incorporated the Black Lung Revenue Act of 1977, which created the Black Lung Disability Trust Fund, the subject of these hearings. The fund has a dual purpose; namely, to collect operator payments from the coal excise tax and to pay benefits to claimants for which no responsible operator can be determined.

This committee's concern and the coal industry's concern is the current financial condition of the Black Lung Disability Fund. Currently, its outlays have exceeded its income from the coal excise tax by approximately $1.2 billion. The difference is made up by advances from the Treasury which are financed by borrowing. Given today's interest rates, interest payments on these advances will soon exceed benefits payments and the fund may not repay the debt it has accrued until the 21st century. This is an unacceptable situation for the U.S. Treasury and for the coal industry who must finance both the benefits and the interest debt.

The remedy for this situation is obvious. First, the Congress must amend the Black Lung Benefits Act so that only coal miners who are totally disabled due to pneumoconiosis, as the medical community defines it, or survivors of miners whose death was caused by pneumoconiosis are eligible for black lung benefits.

Many factors have been cited as the cause of the present status of the fund. Among them are inadequacy of the excise tax, as well as the extent to which the Treasury subsidizes the fund by being forced to borrow on the commecial market and by being repaid at a lower rate of interest. In point of fact, however, we submit that the reason for the insolvency is the excessively liberal criteria used to qualify for benefits. Up to this time, Congress has structured the program to provide benefits to the maximum number of claimants irrespective of disability and irrespective of the cause of death.

As part of the process of reexamining this program, Congress should recognize two key factors which have changed since 1969. First, all States now provide some level of compensation to victims of pneumoconiosis and many States actually provide a higher level of benefits than are available under the Federal Act.

Second, given the approval rates of the Social Security Administration and the Department of Labor, there are very few claimants who would be barred from access to State programs by statutes of limitations which preclude assumption of retroactive liability. These two facts strongly suggest that the Federal Government should now assume a secondary role as had been intended under the original act.

When the program was begun in 1969 there was an absence of State programs. We are well aware that the legislative responsibility for the benefit side of this program lies primarily with the Committee on Education and Labor; however, we believe this committee should at the very minimum examine the difficulties which have arisen with the program. We would urge that this committee also make specific legislative changes in the program, changes which would have to be scrutinized by the Committee on Education and Labor, as part of its effort to make this program self-sustaining as the 1978 amendments contemplated.

The second step to solving the financial plight of the fund is, of course, to increase the black lung excise tax. The coal industry has never objected to the adequate and even liberal compensation of true victims of complicated pneumoconiosis. We supported this legislation in 1969 and we advanced the whole concept in response to requests from the House Committee on Labor for getting out of the dilemma. It was the industry that proposed the establishment of this white lung trust fund, the whole concept, not the way it came out, but the concept. That was our initiative and we are proud of it. We are not proud of the results that flow from that program.

We cannot condone a program which, hiding under this nonobjectionable goal, has been transformed into a general Federal supplementary pension plan for a certain specified part of the labor force, no matter how dangerous or difficult the occupation. The financial plight of the disability fund must be cured in the first instance by actions which address the immediate cause of the present insolvency; namely, the present overly broad eligiblilty criteria which have resulted from the progressive loosening of standards that has occurred over the past decade.

If a tax increase is still required after this reform has been accomplished, then it follows from our industry's position that such an increase would be acceptable. I must insist, however, that raising the tax alone, as is advocated by some, is not acceptable and not sound social policy.

Although such a course may be easy in a political sense, it ignores the real problem and, as such, constitutes no answer to the real problem.

The history of this program has been one of repeated liberalization with the deliberate purpose of extending benefits to claimants who are not disabled by pneumoconiosis. We would submit that that effort has succeeded beyond its proponents' wildest dreams. Now we must come to grips with the results. We must pay the staggering bills.

As a representative of the industry that must come up with the money, either collectively or as individual coal companies, I urge Congress to restore some rationality and equity to this program.

Finally, on pages 8 and 9 I would like to highlight the specific elements of the position of my association with respect to this important issue. We believe that fundamental satutory changes must be enacted if the Black Lung Disability Trust Fund is to be placed on sound financial footing. The areas most in need of reform and the rationale behind them are:

First, definition of "pneumoconiosis," "miner" and "total disability." As I explained earlier, the progressive loosening of eligibility requirements has led to the present lamentable situation in which benefits are provided to claimants who have never been in a mine who, by the normal definition, cannot be considered to be miners or who by medical definitions are not totally disabled or suffering from pneumoconiosis. This has resulted from creating legal definitions whereby perfectly well understood concepts are redefined in the law to mean something quite different from what they are normally understood to mean. We, therefore, recommend that the Act be amended to restore the pre-1977 definitions to these terms.

Second, eventual transfer of the program to State worker's compensation programs. The Federal black lung program was originally conceived as a temporary supplemental program designed to remedy the effects of perceived inadequacies in the State worker's compensation programs for the compensation of coal workers' pneumoconiosis [CWP]. Since that time, State programs have improved substantially. We would, therefore, suggest that the statute be amended to acknowledge these developments and to provide that no new claims will be accepted under the Federal program at a date certain.

Presumptions: The statutory presumptions contained in the law are not based on rational scientific or medical principles. Because of these presumptions, benefit awards are based on a coal miner's employment or age rather than on the medical evidence presented. Therefore, we propose that the presumptions be deleted or their use restricted to cases where objective medical evidence is unavailable.

Third, re-reading of X-rays. As my testimony earlier illustrated, current law severely restricts the use of X-ray re-readings by highly qualified experts. This restriction, which blatantly violated every rule of evidence, should be deleted in that the X-ray is regarded as the best evidentiary tool for diagnosing pneumoconiosis in a living miner.

Fourth, benefit offset. To the extent that black lung benefits were intended to assure the adequate income maintenance to retired coal miners, widows and surviving dependents, it has become duplicative of the services offered by a number of other public programs. We, therefore, believe that the statute should be amended to provide that black lung benefits be reduced by the total amount received pursuant to any State or Federal workmen's compensation program, monthly disability benefit payment and by any excess earnings as defined under section 203 of the Social Security Act.

Fifth, benefit payment rates. Currently, the black lung payments are pegged to the Federal Civil Service pay system at a rate equal to one-half of the GS-2 salary. These salaries are increased annually with the result that there is an automatic inflation index built into black lung benefits. As noted above, benefits under the Black Lung Act were intended to be merely a supplement to other sources of income, rather than to be self-sufficient income themselves. We, therefore, propose that the automatic indexing provision be eliminated.

Sixth, add a statute of limitations on the filing of a claim. There is no meaningful statute of limitations at the present time under the act. This has resulted in operators being unable to determine future liability. We recommend that the act be amended to provide that no claim will be considered unless filed within 1 year after death, or within 3 years of the date of last coal mine employment or that date the miner knows of the existence of pneumoconiosis, whichever is later, in the case of a living miner.

Finally, transfer to the fund liability for those claims which were finally denied prior to 1978 and subsequently approved as a result of the 1977 amendments and which were assigned to responsible operators or their insurers.

Last, automatic benefits to survivors of miners who did not die due to pneumoconiosis occurring after the enactment of new legislation. The act, as amended in 1978, provides automatic lifetime benefits to the survivors of a miner who is receiving benefits, whether or not the miner died due to black lung or any employment-related condition. This approach underscores the supplementary pension aspect of this program and is unprecedented in State worker's compensation laws. It, in fact, makes the coal mine operator a life insuror. Accordingly, the act should be amended to eliminate these unjustified benefits and insure that survivor entitlements are available in the future only in those cases involving a true employment-related death due to pneumoconiosis.

While these are the reforms which the industry believes are necessary, we are cognizant of the fact that they are not all presently achievable. Moreover, we realize that the immediate concern of this committee and the administration is the financial plight of the trust fund. However, I must stress again that any meaningful reform must include adoption of as many of these statutory reforms as are politically possible. Imposition of a tax increase alone represents nothing more than a quick fix with the inherent problems still existing.

Mr. Chairman, the coal industry looks forward to working with you and the members of this subcommittee to structure legislation which will accomplish the joint goal of (1) meaningful benefit reform, and (2) trust fund solvency.

Thank you very much.

Chairman RANGEL. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

I would like to thank you, Mr. Bagge, and also Mr. Watzman and Mr. Solomon for your appearances. The United Mine Workers testified, just before you, that responsible mine operators are challenging 95 percent of the initial claims determination, but are only successful in 15 percent of the cases, the others being overturned on appeal.

As you know, these contested cases are paid for by the trust fund. I wonder how the controversy can be reduced. I have had that brought to my attention many times by potential recipients of the claims.

Mr. BAGGE. Mr. Solomons will respond to that question.

Mr. SOLOMONS. Congressman, I strongly believe the 10 to 15 percent figure cited by the United Mine Workers is very much incorrect. In our experience, and I think in the experience of a vast number of those who are involved in the litigation of these claims the reversal rate of the labor determinations ranges anywhere from 35 to 60 percent. One major coal-mine operator has a reversal rate of 78 percent.

I think it is perfectly clear given those statistics—and I am certain those are quite correct—there is obviously a considerable incentive to contest these determinations. You have to remember these determinations are made in the first instance by the administering agencies on the basis of these criteria that I discussed.

Accordingly, in the litigation of these claims additional medical evidence which is not available to the Department of Labor adjudicators and which neither the Department of Labor nor the Social Security Administration has ever sought in their consideration of claims establishes clearly that these individuals are either not disabled due to a respiratory or pulmonary difficulty or due to pneumoconiosis or they don't have any disease at all. This happens in a large number of cases.

Accordingly, when you present that evidence before an impartial administrative law judge you get a reversal. Another factor that has to be considered in this instance is the fact that if the coal mine operator follows the Department of Labor and Department of HHS determination and pays benefits to those individuals and subsequently succeeds in the litigation of the claim, there is absolutely no mechanism currently available which will permit the operator to recover any amounts paid to this individual even though this claim has been openly denied following a finding by a judge or one of the appellate bodies that reviews these cases.

Mr. DUNCAN. Does your organization have any analysis or recommendation as to possible increase in the cost of coal if the tax is increased enough to make the trust fund solvent? What is your recommendation.

Mr. BAGGE. We have been looking at figures that include the doubling of the present rate with a 4 percent cap. I think our figures show the trust fund would be solvent—by when.

Mr. WATZMAN. As the mine workers testified, 1996. More directly Congressman, any tax increase is ultimately paid by the consumer though increased electric costs as well as increased steel prices.

Any tax increase moreover severely impedes our ability to compete in the export market. We are competing worldwide for the burgeoning markets in Europe. Immediately we are dealing with a cheaper labor force. Second, the cost of transportation is so great, while this increase may seem small on the surface, it coupled with all the other increases that we are facing severely restricts our ability to compete.

Mr. DUNCAN. Our Trade Subcommittee recently talked to Japanese people and they indicated they were paying $8 more per ton for our coal than Australian coal. My question was what would it run a ton if we enacted the tax, to make the fund solvent, without your other recommendations.

Mr. WATZMAN. That is not an analysis that we have done or that I have available but we would be happy to provide that to you.

Mr. BAGGE. Congressman, in summary, we are saying that the tax increase necessary to make the trust fund solvent, may not have to be a doubling of the current rate should the reforms I outlined be enacted.

Mr. DUNCAN. We have only jurisdiction over the tax matter, not over the matter of eligibility. As the chairman indicates, we are interested in both subjects. That is all. Thank you and thank you, gentlemen.

Chairman RANGEL. Thank you.

Counselor, the President indicated that we have to tighten up on statutory definitions, presumptions and well people receiving benefits and then you testified that you are knocking out most of these cases with hearings, up to 78 percent.

Is there any conflict at all in the testimony?

Mr. SOLOMONS. Mr. Chairman, there are two types of cases that you have to keep in mind here. There are cases that go into the trust fund which I understand you are particularly concerned with here and there are cases assigned to individual coal mine operators.

The statute contains a distribution of that responsibility. The vast amount of that responsibility goes into the trust fund. In those cases involving trust fund liability only—none of this activity ordinarily occurs.

In other words, what you have is something similar to what the General Accounting Office reported out in 1977 in which they pointed out that the administering agencies are basically disinterested in any evidence which is contrary to the interest of the claimant.

They will scan a file in order to find anything which would be qualifying under one of the act's presumptions and thereafter approve the claim, put it into payment status and that would be the end of it.

Chairman RANGEL. Even though some are paid by the operators and some by the trust fund, are we dealing with the same standards?

Mr. WATZMAN. Initially, but most important is the fact that the operator has no standing to contest a claim when it is the responsibility of the trust fund. Operators can only contest claims to which they are individually assigned.

Chairman RANGEL. It seems your success is with those that are coming out of the trust fund.

Mr. BAGGE. Our success is with the last responsible operator. It seems to me our industry has been denied a Constitutional right by exacting a tax to fund the Black Lung Trust Fund and then denying us the right to contest these cases.

We are foreclosed from doing it. What Mark is talking about is the other category of cases where there is a last responsible operator.

Chairman RANGEL. Have you drafted what you believe should be a definition of the disease, total disability and these things you talk about?

Mr. BAGGE. Yes; If we go back to the basic definitions before it evolved into a supplemental pension program.

Chairman RANGEL. But you are being philosophical about it. I am asking are you prepared to submit now what you would consider to be appropriate definitions. Because total disability could be death, I don't know. Have you got the definition you want Congress to accept?

Mr. **Bagge**. Yes, we will supply it for you, Mr. Chairman.

Chairman **Rangel**. About this ratio we have for underground mining of coal and surface-mined coal. Do you have any problems in maintaining that ratio or do you have suggestions?

Mr. **Bagge**. Not at all. To the extent which we have been meeting with the Department of Labor and others on this approach we agree that a simple doubling of the current tax is the correct approach to follow.

Chairman **Rangel**. And the value added concept instead of the fee per ton, have you looked into this?

Mr. **Bagge**. We have looked at all the alternatives. We believe the most expeditious way is the doubling across the board including a cap.

Chairman **Rangel**. We will allow the record to remain open for additional questions. Tell me prevention is not in your testimony either. Why is it no one wants to talk about it?

Mr. **Bagge**. It is not that we don't want to talk about it. We are talking about the trust fund here.

Chairman **Rangel**. Could the association save some money by giving chest X-rays to the miners in determining the degree of hazard, health hazard that would be in the mine and use this as evidence when the truck driver comes and makes an application for black lung disability, you could present his 30 years of X-rays and show he never had it when he worked with us. Would that help you with the claims?

Mr. **Watzman**. In the case of responsible operators' claims, yes, but in the case of trust fund claims, no. We have no legal standing to contest that claim.

Chairman **Rangel**. It may not help you with the claim but it could help you in determining the hazard level of particular mines, couldn't it? Is it that expensive?

Mr. **Bagge**. I don't have money in my budget to go around X-raying people, Mr. Chairman.

Chairman **Rangel**. I wouldn't want you to go around X-raying people. I just felt the administration thought that the private sector should be concerned with their people and their health for productivity so you could make more money.

Mr. **Bagge**. We are doing that.

Chairman **Rangel**. You are X-raying people?

Mr. **Bagge**. Yes.

Chairman **Rangel**. Then your miners are X-rayed on a regular basis?

Mr. **Watzman**. Not by the company itself. We cannot force a miner to submit to X-rays.

Chairman **Rangel**. I am a friend of the private sector. I would not want you to force miners to be healthy. If they don't want it, don't force it. I am only concerned that you increase your productivity, that you be able to compete against foreign markets and that you have the healthiest work force that can be possible to produce and that the cost not be so exorbitant that you are unable to compete.

That is all I want.

Mr. **Bagge**. We want that too.

Chairman **Rangel**. Why aren't you doing it?

Mr. **Watzman**. To a great degree we are. While your focus has been on the area of X-rays, in the area of dust control the Mine Safety Administration reported that on an industrywide basis for surface facilities the average dust level last year was less than one-half percent.

Chairman **Rangel**. My question was not meant to be critical. It was because I didn't know. Please send me whatever the industry does as it relates to preventing the disease and also as it relates to the X-rays.

It may not be a practical thing to do. But if it is, we would like to recommend that to the committee that has jurisdiction.

Mr. **Bagge**. We will be happy to supply that.

[The following was subsequently received:]

NATIONAL
COAL
ASSOCIATION

COAL

CARL E. BAGGE
President
(202) 463-2647

October 5, 1981

The Honorable Charles Rangel
Chairman
Oversight Subcommittee
Ways and Means Committee
1102 Longworth H.O.B.
Washington, D.C. 20151

Dear Chairman Rangel:

Thank you for providing the National Coal Association the opportunity to present its views relative to the Black Lung Disability Trust Fund.

During my testimony, we were requested to provide the Committee with legislative language which would amend the Black Lung Act to accomplish the statutory changes which we recommend. Also, you requested information relative to industry efforts to prevent and/or curtail the incidence of pneumoconiosis.

The legislative language is provided as enclosure 1.

With regard to industry efforts to prevent pneumoconiosis, Section 203 of the Federal Mine Safety and Health Act of 1977 provides for periodic medical examinations of miners. Further, it enables miners showing x-ray evidence of the development of pneumoconiosis to exercise an option to transfer to another position at the mine, without a reduction in pay, for a period or periods necessary to prevent further development of the disease.

Through the rulemaking process, HSS has adopted, and from time-to-time strengthened, mandatory standards (42 CFR Part 37) for the miner x-ray program which contains the following salient features:

- Voluntary X-ray examinations, at the mine operator's expense, for those miners employed prior to the 1969 Act, and mandatory examinations for miners employed subsequently.

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- The interval at which each miner is reexamined, which shall be no less than 5 years.
- HHS approval of facilities at which X-ray examinations are conducted, setting out stringent standards for X-ray quality and procedures, and subject to HHS approval with respect to the examination being available to the miner at a time and place convenient to him.
- Provision for HHS to conduct the examinations, and to be reimbursed by the mine operator, whenever the operator does not receive HHS approval of his plan for making X-ray exams available to miners.
- Adoption of the standard international system for classification of X-rays into various categories related to dust retention in the lungs.
- Stringent standards under which physicians may become qualified by HHS to classify X-rays.
- An entitlement for any miner whose X-ray has been classified as showing any category of simple pneumoconiosis (including the nondisabling categories), or complicated pneumoconiosis, to opt for a transfer to another position at the mine where the dust concentration is no more than 1.0 mg/m^3.
- Provisions for denying the mine operator access to information regarding the results of the miners' X-ray, and for the miner to obtain a subsequent X-ray, at his own expense, should he desire it to be used by HHS for reconsideration of its negative determination of his right to transfer.

In addition, the 1969 Act established a 3 milligrams of dust per cubic meter of air (mg/m^3) dust exposure standard for the three years following its passage. Thereafter, the Act required maximum exposures of 2.0 mg/m^3. As we reported during our presentation, the Mine Health and Safety Administration reported that last years national average for underground mines was 1.0 mg/m^3 and the national average for suface mines was 0.5 mg/m^3. These clearly illustrate the commitment of the coal industry to provide a healthy environment for all miners.

Lastly, Mr. Chairman, during the hearing we briefly discussed the inability of the coal industry to contest claims which are the responsibility of the Trust Fund. As was explained, if no responsible operator can be located, that claim becomes the responsibility of the Trust Fund. Under the statute, coal operators are precluded from contesting these claims. This results in the coal operator becoming a life insurer, without having had the opportunity to reverse the DOL determination. This situation can and should be clarified. Following are the amendatory steps necessary to accomplish this without creating a situation where the Labor Solicitor and the Special Counsel on behalf of the Trust Fund would appear in adversary roles:

Section 422(a) of the Federal Coal Mine Health and Safety Act (30 U.S.C. 422(a)) is amended as follows:

(a) Insert between the numbers 13 and 29 the number 21(a)

Section 422(k) of the Federal Coal Mine Health and Safety Act (30 U.S.C. 922(k)) is deleted in its entirety.

Establish within the Department of the Treasury, an office to be known as the Office of Special Counsel for the Black Lung Disability Trust Fund for the purpose of being a party in any administrative or judicial proceeding which may result in the disbursement of moneys from the Fund.

I hope this information will be helpful. The coal industry looks forward to working with you and the Members of your Subcommittee.

Sincerely,

Carl E.-Bagge.

Enclosure

CEB:aj

NCA Board Position

BE IT ENACTED BY THE SENATE

AND HOUSE OF REPRESENTATIVES OF THE

UNITED STATES OF AMERICA IN

CONGRESS ASSEMBLED

SHORT TITLE

SECTION 1. This Act may be cited as the Black Lung Benefits Reform Act of 1981.

DEFINITIONS

SECTION 2. (a) Section 402(b) of the Federal Coal Mine Health and Safety Act(30 U.S.C. 902(b)) is amended to read as follows:

(b) The term "pnuemoconiosis means a cronic dust disease of the lung found to arise out of coal mine employment which is characterized by the deposition of coal dust in the lung and attendant lung tissue reaction causing physiological impairment of the respiratory or pulmonary system

(b) Section 402(d) of the Act (30 U.S.C. 902(d)) is amended as follows:

(d) The term "miner" means any individual who is or was directly and regularly employed in an occupation involving the extraction or preparation of coal in or around a coal mine or coal preparation facility during periods in which coal is or was extracted or prepared.

(c) Section 402(f) of the Act (30 U.S.C. 902(f)) is amended as follows:

(f)(1)(A) such regulations shall provide that a miner shall be considered totally disabled when the medical severity of the pneumoconiosis prevents him or her from performing his or her regular coal mine work or other gainful employment for which the miner is suited by training and experience.

(d) Section 402(f)(1)(B) of the Act is deleted

(e) Section 402(f)(10(C) is redesignated 402(f)(1)(B)

(c) Section 411 (c)(5) of the Act (30 U.S.C. 921(c)(5) is amended by inserting after the term "Section 412(a)(2)," the following:

> "if the claim therefore was filed prior to March 1, 1978,"

BENEFIT RATES

Section 4. (a) Section 412 (a)(1) of the Act (30 U.S.C. 922(a)(1)) is amended as follows:

> (b) In the case of totally disability of a miner due to pneumoconiosis, benefits shall be paid during the disability at a rate equal to 50 percentum of the minimum monthly payment to which a Federal Employee in grade GS-2, who is totally disabled would have been entitled as of October 1, 1981 under Chapter 81 of title 5, United States Code.
>
> (b)(1) Notwithstanding subsection (b), bebefit payments under this section to a miner or his widow, child, parent, brother or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow, child, parent, brother, or his sister under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner and the amount by which such payment would be reduced on account of excess earnings of such miner under section 204(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

EVIDENCE

Section 5. (a) Section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking all words appearing after the term "supportive materials " and inserting the following:

> In order to ensure that any medical test evidence is of adequate quality to demonstrate the presence of pneumoconiosis or total disability therefrom, and in order to provide uniform quality in evidence, the Secretary of Labor shall, by regulation, establish specific quality control criteria applicable to all evidence submitted. Claimants inder the part shall be rimbursed for reasonable medical expense incurred by them in establishing their claims. For purposes of determining total disability under this part only, the provisions of subsections (a), (b), (c), (d) and (g) of Section 221 of such Act shall be applicable. The provisions of Section 221 of of such Act shall be applicable. The provisions of Sections 204, 205(a), (b), (d), (e), (g), (h), (j), (k), (l) and (n), 206, 207, and 208 of the Social Security Act shall be

(f) Section 402(F)(1)(D) of the Act is redesignated Section 402(F)(1)(C).

(g) Section 402 (F)(2) of the Act is amended by adding at the end thereof before the period the following:

> "except that in the application of such criteria the Secretary of Labor shall obtain and consider all medical evidence relevant to a determination that a miner is or was totally disabled by pnuemoconiosis, in accordance with this title."

PRESUMPTIONS

SECTION 3. (a) Section 411 (c)(3) of the Act (30 U.S.C. 921(c)(3)) is amended by inserting at the end thereof before the period the following:

> "except that no benefits shall be payable under this part during any period in which the miner is employed in or around a coal mine or in comparable employment."

(b) Section 411(c)(4) of the Act (30 U.S.C. 921(c)(4) is amended as follows:

> If a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's. his widow's, his child's, his parent's, his brother's, his sister's or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if all relevant medical evidence establishes the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis or that at the time of death he was totally disabled by pneumoconiosis. An affadavit may not be used to establish the presumption. The presumption shall be rebutted if the relevant medical evidence considered as a whole establishes that the miner does not have pneumoconiosis or that the totally disabling respiratory or pulmonary impairment did not arise primarily out of or in connection with employment in a coal mine.

applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under Title II of such Act or except as the Secretary of Labor may prescribe with respect to claims filed under Part C of this title. Each miner who files a claim for benefits under this title shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

(b) Section 413(d) of the Act (30 U.S.C. 923(d)) is amended to read as follows:

(d) No miner who is engaged in coal mine employment or comparable employment shall be found eligible to receive any benefits under this part while so employed.

ALTERNATE COVERAGE

Section 6. Section 421(a) of the Act (30 U.S.C. 931(a)) is amended to read as follows:

On or after January 1, 1974 any miner or survivor of a miner who was last exposed to coal dust while in the employ of an employer, including the United States of America or any agency or instrumentality thereof, required to secure or provide the payment of worker's compensation benefits under Title 5 United States Code sections 8101-8150 as amended, Title 33 United States Code sections 901-951 as amended and extended, or Title 45 United States Code Sections 51-60 as amended, with respect to such miner, shall not be eligible to receive benefits under this Part.

OPERATOR LIABILITY AND LIMITATIONS ON FILING

Section 7. (a) Section 422(b) of the Act (30 U.S.C. 932(b)) is amended by striking all words following the terms "section 423 of this part."

(b) Section 422(e) of the Act (30 U.S.C. 932(e)) is amended by

(1) replacing the period at the end of subparagraph (2) thereof with the following ";or", and

(2) adding a new subparagraph (3) as follows:

"(3) with respect to any claim filed after December 31, 1983."

(c) Section 422(f) of the Act (30 U.S.C. 932(f)) is amended as follows:

(f)(1) Any claim for benefits by a miner under this section filed before the date of enactment of this Act shall be filed within three years after whichever of the following occurs later -

(A) a medical determination of total disability due to pneumoconiosis; or

(B) March 1, 1978.

(2) Any claim for benefits after the date of enactment of this Act.

(A) Shall be filed within three years of the date on which a miner knew or should have known of his total disability due to pneumoconiosis or, in the case of a claim of a survivor of a miner, within three years of the miner's death.

(B) On the basis of eligibility under Section 411 (c) (4) of this Title shall be filed within three years from the date of the miner's last exposed employment in a coal mine.

BENEFIT OFFSETS

Section 8. Section 422(g) of the Act 30 U.S.C 932(g)) is amended to read as follows:

(g) The amount of benefits payable under this section shall be reduced on a monthly or other appropriate basis, by the amount of any benefits or compensation awarded to the beneficiary under the workers compensation, unemployment compensation, or disability insurance laws of a state or the United States, and by the amount by which such payment would be reduced on account of the excess earning of such beneficiary under section 203(b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

RETROACTIVE PAYMENT OF BENEFITS

Section 9. Section 435(a)(2)(A) of the Act (30 U.S.C. 945(A)(2)(A)) is amended by inserting before the period at the end thereof The following:

",except that, in the case of a claim which involves the award of benefits on a retroactive basis, no payment of benefits on a retroactive basis shall be made with respect to such claim until such claim is no longer subject to any administrative or judicial review".

TRUST FUND LIABILITY

Section 10. (a) Section 424 (A)(6) of the Act (30 U.S.C. 934(A)(6) is amended to read as follows:

(6)the reimbursement of operators for amounts paid by such operators (other than as fees, penalties, or interest) before the date of enactment of this Act in satisfaction (in whole or in part) of claims of miners whose last employment in coal mines was terminated before January 1, 1970, or whose claims were approved under Section 435(a)(2)(A) or 435 (a)(2)(B) of this Part.

(b) Section 435(a)(2)(A) of the Act (30 U.S.C.(a)(2)(A) is amended by inserting immediately before the term "in accordance with this part" the following: from the Fund,

(c) Section 435(a)(3)(A) of the Act (30 U.S.C.(a)(3)(A) is amended by replacing the period at the end thereof with a comma and inserting the following:

> "except that a claim transferred to the Secretary of Labor under paragraph (1)(B) of this section shall, if approved, be paid exclusively by the Fund.

MISCELLANEOUS

Section 11. Section 430 of the Act (30 U.S.C. 940) is amended by inserting after "Act of 1977" the following"

> ", or the Black Lung Benefits Reform Act of 1981."

Chairman RANGEL. Staff will have other questions that it will be forwarding.

Mr. Coakley, counsel for American Insurance Association. He will be accompanied by Andrew Kalmykow.

We will put the report on Federal Black Lung Legislation into the record.

Mr. Coakley.

STATEMENT OF CHARLES COAKLEY, COUNSEL, AMERICAN INSURANCE ASSOCIATION, ACCOMPANIED BY ANDREW KALMYKOW, CONSULTANT

Mr. COAKLEY. My name is Charles Coakley. I am counsel with the American Insurance Association, an organization of 150 property and casualty insurance companies.

With me today is Andrew Kalmykow, consultant to our association. Mr. Kalmykow has prepared the historical overview of the black lung law which is too long to read for you this morning, but we have offered it for the record. The member companies of the American Insurance Association write nearly 50 percent of the total workers' compensation insurance written throughout the country. Accordingly, we greatly appreciate this opportunity to present our views on reform of the black lung law.

There are many reforms needed in this law. Because of limited time and since other speakers have, and undoubtedly more will, comment on these reforms, I wish to address only the need for redress of the inequity of that provision of the 1977 amendments which transferred retroactively to coal operators liability for claims previously denied as well as pending claims.

The 1977 amendments broadened eligibility requirements for benefits. These broadened provisions were made retroactively applicable to part B and to part C claims previously denied, as well as pending claims. Prior to 1977 all claims filed prior to July 1, 1973 were paid out of Federal revenues. These are part B claims. Claims filed on or after July 1, 1973, were the responsibility of operators and insurers and were designated part C claims. The 1977 amendments provided that part B claims which had been denied were to be reconsidered if the worker so requested. If he did, the request for review was to be deemed the date of filing of the claim. Thus, a claim which would have been payable out of Government funds if it had been approved originally became the responsibility of operators and insurers if it was subsequently approved after reconsideration using the new eligibility requirements. These new requirements also applied to part C claims which had been previously denied.

There was no way operators or insurers could have anticipated this liability. When policies were issued they contemplated coverage only for claims filed on or after July 1, 1973. No premium was collected for any claims filed before that date. We submit this is basically unfair.

The shifting of liability for the reconsidered part B claim and for pending and for reopened part C claims was accomplished by means of obscure language inserted by the Conference Committee which adapted language in the Senate bill, S.B. 1538 of the 95th Congress. This provision was not debated and few, if any, realized that this language would make operators and carriers retroactively liable for claims that were not made originally against them. We believe that it is time to remedy this injustice.

We believe that the trust fund should reimburse operators and insurers for these unanticipated claims. If increased assessments are needed to fund this reimbursement, they should be made. The transfer of this liability to the trust fund is equitable since it transfers the claims from individual operators who had no warning of potential liability to all coal operators.

In addition to my prepared statement I would like to touch briefly on some of the other needed amendments to the black lung law.

We agree with the views expressed by the National Coal Association that what we are dealing with today is essentially a legal disease. Not necessarily a disabling disease but a legal disease for which it is easy to qualify for benefits.

The other problem which may account for the high number of contraverted claims is the procedure by which the claim evaluation is done.

Currently, the operator is not notified that there is even a claim pending until there is a determination of compensation made by the Department of Labor and then that claim has been forwarded to the operator who then has 30 days from the notice of the mailing to decide whether to pay or to contravert.

We submit that this is a bad way to pay claims. Certainly, when a claim is made by a miner or his dependent, the operator should be notified of the claim right away so that questions of employment, exposure, ultimate liability, could be anticipated and be resolved.

We thank you for the opportunity to present our views and we will be happy to answer any questions that we can.

REPORT ON FEDERAL BLACK LUNG LEGISLATION

By Andrew Kalmykow, Consultant, American Insurance Association

Background

Serious financial and administrative problems are presently facing the Federal Black Lung Program. They indicate the consequences of creating a well-intentioned, but hastily conceived, compensation system without adequate study or hearings. In the Senate, it was originally proposed and adopted as a floor amendment to the Federal Coal Mine Health and Safety Act.

Difficult problems surfaced immediately upon enactment. Amendments intended to be remedial have served instead to aggravate the situation. To understand present concerns, it is helpful to know how the program was created and how it has developed.

Report on Federal Black Lung Legislation

Original Enactment - 1969

On November 20, 1968, a mine explosion in West Virginia killed 78 men. This provided very strong impetus for the enactment of federal coal mine safety and health legislation. While sentiment in favor of such legislation was strong, there was considerable difference of opinion as to its form and content. This was the first major federal enactment on industrial safety and health. Interest centered not only on safety but on health as well, including elimination of dust hazards.

Senate Action

The bill in the Senate neither as introduced nor as reported by the Committee on Labor and Public Welfare (S. 2917, 91st Congress, 1st Session) on September 17, 1969 contained provisions for compensation for coal workers' pneumoconiosis, now commonly known as black lung (Legislative History, Federal Coal Mine Health and Safety Act, Committee on Education and Labor, House of Representatives, 91st Congress, 2nd Session, March 1970, Committee Print). That disease had been mentioned at the hearings but this was primarily from a health standards viewpoint. The question of compensation was not at issue and was not addressed by persons especially interested and informed on this aspect of the subject.

The bill as reported created a Research Trust Fund (Title V) to be supported by a graduated assessment ranging from 1 to 4 cents per ton of coal. A point of order was raised concerning this provision on the ground that a tax measure could not originate in the Senate (P. 260, Legislative History, supra). In the meantime, a floor amendment was proposed by Senator Randolph for grants in aid to states for temporary limited compensation benefits to coal workers totally disabled from complicated pneumoconiosis (P. 321, Legislative History, supra) payable until January 30, 1972. The Secretary of HEW was, in the meantime, to make a study. Question was raised as to the propriety of the point of order. As a compromise, compensation provisions were substituted for the Trust Fund in Title V under unanimous consent, which prevented further amendment (P. 333, Legislative History, supra). The amendment was then adopted by a vote of 90 ayes, 0 nays.

Finally, after considering a great many other amendments, the bill (S. 2917) was passed on October 2, 1969 by a vote of 73 ayes, 0 nays (P. 516 ff, Legislative History, supra).

The bill, as passed in the Senate, included the compensation provisions. As indicated above, as part of the compromise on the tax point of order issue, the compensation provisions could not be amended. This provision was similar to that originally proposed by Senator Randolph but the period of payment was increased to January 30, 1973 when they were to terminate. The federal government's contribution for such benefits under agreement with the states, which would administer the program, would be 100% the first two fiscal years and 50% of the benefits for the following two years. Standards of eligibility were to be set by the Secretary of HEW who would immediately undertake the study. The dimension of the program contemplated is indicated by an appropriation of $10 million for the balance of the first fiscal year and for the second year and $30 million for the next two years but not to exceed $15 million annually. These figures may be compared with the more than a billion dollars a year now being paid.

House Action

In the House, extensive hearings had been held on Coal Mine Health and Safety by the General Subcommittee on Labor of the House Committee on Education and Labor (P. 560, 561, Legislative History, supra). Here again, the main thrust of the hearings was on health and safety, not compensation. The Select Subcommittee on Labor of the House Committee on Education and Labor had held some hearings on several bills relating to compensation for pneumoconiosis (H. R. 9850, H. R. 10215, H. R. 10259, H. R. 10267 and H. R. 10421) but these were limited in scope. The primary subject of those hearings was H. R. 11476 which would have created a broad federal system of compensation superimposed on the state system based on the Longshoremen's Act for all mining injuries. There was wide opposition to the latter. The Select Subcommittee on Labor did not report any bill.

However, the General Subcommittee on Labor amended H. R. 1047, the safety and health bill it had been considering, and reported it to the full Committee on Education and Labor on August 7, 1969. This bill included a limited provision for compensation from complicated pneumoconiosis. This was reported to the House as a clean bill on September 18. On September 24, the Committee voted that the clean bill, given the number of H. R. 13950, be reported to the House. It may be noted, as indicated above, that the Senate Committee on Labor & Public Welfare had reported its Coal Mine Health and Safety bill, without a compensation provision, on September 17, 1969. Some element of competition seems to have been present concerning priority of action on this subject between the two branches of the Congress.

H. R. 13950, as reported to the House, provided benefits for total disability from complicated pneumoconiosis or for death of a person when so disabled at the rate of 50% of that payable to a Federal Employee Grade GS-2 (next to lowest grade) under the Federal Employees Compensation Act. The same benefits would be payable to their widows, with increases if there were dependents. Basic compensation would be increased by 100% if there were 3 or more dependents. However, claim for this compensation had to be made within 1 year of the first x-ray examination provided for in the bill for employed miners and 3 years after enactment of the law. The intention to limit such compensation to persons suffering from the disease at the time the law was enacted is clear. Thus, it had only retroactive application as indicated by Mr. Dent, Chairman of the General Subcommittee on Labor which had reported the bill of which he was chief sponsor (P. 718, Legislative History, supra).

As indicated above, the Senate had passed S. 2917 on October 2, 1969 before the House considered H. R. 13950. Debate on that bill began on October 27, 1969 under a resolution providing that the House constitute itself a Committee of the Whole to consider and adopt amendments, then report the bill to the House without intervening motion except to recommit. After passage, it would be in order in the House to consider S. 2917 and move to strike all matter after the enacting clause and insert in lieu thereof the provisions of H. R. 13950 as passed the House.

Numerous amendments were proposed, many of which were adopted. Prior to vote on the measure, Congressman Scherle moved the bill be recommitted to the Committee on Education and Labor with instructions to delete the compensation provision, Sec. 112(b). That motion to recommit failed. (P. 920, Legislative History, supra). The bill then passed by roll call vote, 389 ayes, 4 nays, 38 not voting. Thereupon, in accordance with the resolution, the text of H. R. 13950 was substituted for that of S. 2917.

Conference Committee Report

Because of the differences in the measures as passed the House and Senate, a Conference Committee was created (P. 960, Legislative History, supra). With respect to black lung compensation, the major differences between the House and Senate bills were as follows. Under the Senate bill, benefits were to be paid by the states under guidelines issued by the Secretary of HEW. These would be fully funded by the federal government for the fiscal years ending June 30, 1970 and June 30, 1971 and 50% by the federal government and 50% by the states until June 30, 1973. In the meantime, the Secretary of HEW was to conduct a study. This was a benefit system of very limited scope and duration.

In the House bill, benefits approximately at the same scale were to be fully federally funded but only for miners totally disabled as of the effective date of the Act or shortly thereafter. Thus, it was intended to have only retroactive application. This was also a measure limited in scope.

The Conference Committee did not make its report until December 16, 1969, just before the holidays. To the great surprise of most interested parties with respect to the compensation provision for Black Lung, the measure as reported bore little resemblance to either the House or Senate bills.

Title IV of the Conference Committee bill now contained three parts. Part A covered definitions, including a broad definition of pneumoconiosis. The House bill had only been applicable to complicated pneumoconiosis, the disabling form of the disease. A broad definition of total disability was also included, to be at the discretion of the Secretary of HEW but not more restrictive than that under Social Security.

Part B, limited to persons employed in underground mines, provided for federally funded benefits payable by the Social Security Administration for claims made on or before December 31, 1972. This part newly included some far-reaching presumptions. After 10 years or more of employment in underground coal mines, there would be a rebuttable presumption that the pneumoconiosis arose out of the employment or in case of death from a respiratory disease that was due to pneumoconiosis. If (a) an x-ray showed an opacity greater than 1 centimeter (about 3/16 of an inch), or (b) massive lesions appeared in biopsy or autopsy, or (c) diagnosis by other means could be expected to yield results in (a) or (b), there was an irrefutable presumption of total disability. The latter irrefutable presumption was much broader than that applicable to social security disability benefits. Benefits were on the same basis as those in the House measure, being related to Grade GS-2 of the Federal Employees Compensation Act. These benefits, while initially low, are annually adjusted to the cost of living.

Benefits were to be reduced by workers' compensation payments under state law, unemployment insurance, non-occupational state disability benefits or social security disability benefits. Prior claim under the state worker's compensation law had to be filed unless the filing would be clearly futile. No benefits were to be paid after December 31, 1972 if claim was filed after December 31, 1971.

The greatest change, however, was the addition of a New Part C for claims after December 31, 1972.

This part, although it purported to encourage coverage by state workers' compensation laws, in effect created a federal compensation system for the payment of black lung benefits payable largely by industry. This system was intended to be temporary but since has been made permanent.

On and after January 1, 1973 (later amended to read January 1, 1974), claim would have to be made under state law except that during any period when a miner or surviving widow are not covered by a state Act "which provides adequate coverage for pneumoconiosis," they may claim benefits under this Part. The Secretary of Labor is to publish a list of states that are in compliance. The conditions of compliance were:

(1) payment of benefits for total disability or death of miner due to pneumoconiosis;

(2) benefits substantially equivalent or better;

(3) standards for determining death or total disability substantially equivalent to those in Part B;

(4) a 3-year statute of limitations running 3 years from the date of discovery of total disability due to pneumoconiosis or the date of death;

(5) provisions for present operators to assume liability of prior operators;

(6) provisions consistent with applicable provisions of the Longshoremen's Act (Sec. 421).

During any period of non-compliance, operators would have to insure or self-insure liability under this Part (§423).

Benefits under this Part would be reduced by the amount of compensation under any federal or state workers' compensation law because of death or disability due to pneumoconiosis. The Secretary would make appropriate regulations, including presumptions for determining whether pneumoconiosis arose out of employment in an underground mine. An operator who acquired a mine after the effective date of this Act would have to assume the compensation liability of a prior operator who was an operator of the mine after the effective date of this Title (§422).

In the case of a miner or his widow entitled to benefits, where the operator is uninsured or has not paid such benefit within a reasonable time or if there is no operator who is required to insure, the Secretary would pay the benefit with right of recoupment (§424).

Neither the Senate bill nor the House bill had contained any such provisions. As indicated above, the Conference report was made on December 16. The House agreed to the Conference report on December 17, and the Senate on December 18. Congressman Erlenborn raised a point of order pointing to the new provisions in the bill concerning compensation not present in the Senate or House versions (Page 1059 ff, Legislative History, supra). Under usual practice, a Conference Committee must merely reconcile differences between the two bills as passed by each branch of the Congress. The Chair ruled (Page 1016, Legislative History, supra) that where one House has stricken all after the enacting clause and inserted an entire substitute, the entire subject matter is committed to the conference who may report any provision germane thereto provided it remains within the broad outline of matter committed to conference.

Even though the Labor Department had indicated opposition to the bill as reported by the Conference Committee, the President approved the measure on December 30, 1969, accompanied by a message stressing the importance of the safety features of the law but expressing strong reservations about the compensation features of the act. He stated, "I want to emphasize very strongly that Title IV is temporary, limited and unique and in no way should be considered a precedent for future Federal administration of workers' compensation programs."* He also pointed out that the act may present problems of administration that require legislative changes. If such problems arise, he would propose corrective legislation.

Experience Under 1969 Enactment

This proved prophetic. Administrative problems arose almost immediately. When the law was enacted, both cost of the measure and the number of persons entitled to benefits were expected to be relatively limited. The Secretary of the Interior, after consultation with the Department of Labor, estimated the cost of the first year between 150 million and 383 million and the number of eligible active and retired miners from 40,700 to 54,400 (Page 1093, Legislative History, supra) and the 20 year cost between 1.2 and 2.7 billion. Advocates of this legislation thought these estimates were too high (Page 1085, Legislative History, supra).

Actually, within 1 month of enactment, almost 100,000 claims for benefits were filed, by the end of the first year 247,000 and by the end of the second year 348,000. (Report to the Congress, Achievements, Administrative Problems and Costs in Paying Black Lung Benefits to Coal Miners and their Widows, by the Comptroller General of the United States, September 5, 1972, page 2)

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* The Report of the House Committee on Education and Labor on H. R. 13950, in referring to the pneumoconiosis benefit provisions in the bill, similarly contains the following statement: "This program of payments - maintained in the bill by a committee vote of 25 to 9 - is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. Moreover, it is clearly not intended to establish a Federal prerogative or precedent in the area of payments for the death, injury, or illness of workers." Legislative History (supra) p. 570.

The Social Security Administration was overwhelmed by the flood of claims and the obligation to meet an unexpected responsibility for which they were totally unprepared and of which they had no prior notice. The Committee Staff Report on the Disability Insurance Program prepared for the House Committee on Ways and Means, July 1974 (pages 8 and 9) states:

> "The Black Lung program came out of 1969 legislation in which neither the House nor Senate versions contained a provision for the Social Security Administration to administer the program. The decision to give the Social Security Administration responsibility for administering the initial phase of the program was made by the conference committee in December 1969. Prelegislation planning for the implementation of Black Lung programs was nonexistent and its impact on the social security disability program was completely unassessed."
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> *****
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> "At the present time, the Black Lung crisis has moved to the hearing stage where Social Security disability cases are being literally shunted aside so that the flood of Black Lung cases can be dealt with. The courts and the Social Security litigation staffs, who are already hard pressed, will soon be similarly adversely affected and their ability to carry out their Social Security disability duties will be further impaired. (Social Security responsibility will continue for Black Lung beneficiaries who applied prior to July 1, 1973, and the Social Security District Offices will continue to take applications for the Labor Department-administered Black Lung program until that program expires in 1981.)"

Even though the law contained broad presumptions and definitions and these were very liberally construed by the Social Security Administration, approximately 50% of the claims were denied. As of December 31, 1971, 347,716 claims had been filed with an allowance rate of 49.5%. Cumulative payments exceeded $532 million (Page 18, The Report of the Comptroller General, supra). That report emphasized that coal miners, like anyone else, contracted many conditions other than CWP (black lung) and some of these affected a person's ventilatory capacities in ways similar to CWP (Page 31 id.) including heart diseases, infectious diseases, muscular and neurological conditions, asthma, emphysema, bronchitis, etc. Even though the legislation was intended to compensate only total disability from complicated CWP, the disabling stage of that disease, affecting 3% or less of active miners and 9% of non-active,[*] benefits were awarded if the miner had simple CWP if he were disabled from other conditions. Medical records were also difficult to obtain for deaths occurring many years ago. In some cases, benefits were awarded if there was the "remotest possibility that CWP contributed to the death in any way" (id, P. 36). Denials were made only where evidence showed unequivocally that CWP did not contribute to the miner's death; i.e. hernia, cancer, etc. Of the miners' claims that were denied, 65.1% indicated that x-rays or biopsy did not show miner had CWP and 24.7% that he had simple CWP but was not disabled.

Nevertheless, many claimants whose claims were denied felt they should be compensated and so did other dependents who were not included in the benefit system.

Because the law was immediately effective and this vast responsibility was unexpectedly thrust upon the Social Security Administration without opportunity to prepare for it, delays had developed in the processing of claims while the rules of procedure and evaluation were formulated and field facilities were created. These delays no doubt served to add to the dissatisfaction with the operation of the law.

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[*] Pneumoconiosis in Aphalachian Bituminous Coal Miners by W. S. Lainhart, et al., Public Health Service Publication number 2,000, 1969, U. S. Department of Health, Education and Welfare, Superintendent of Documents, Washington, D.C. See also Mineral Resources and the Emvironment, Supplementary Report, Coal Workers' Pneumoconiosis - Medical Considerations, Social Security Implications, National Academy of Sciences (1976) P. 46-47. As of December, 1974, there were 113,700 coal miners, in December, 1975 181,800 coal miners and that in 1939 there were 454,056 coal miners.

1972 Amendments

In 1972, because of this pressure, the law was further liberalized. Since these benefits were payable out of general revenue, industry either did not testify on this amendment or where testimony was given, it was discounted because benefits were not then the obligation of industry.

The 1972 amendments:

1. Extended the social security part of the program (Part B) for 1 year.
2. Provided benefits to children, parents, and collateral dependents including students.
3. Broadened the definition of total disability. It was now considered totally disabling if pneumoconiosis prevented the miner from engaging in gainful work which required the skills and ability comparable to those of any employment in a mine in which he had been previously engaged over a substantial period of time.
4. Surface, as well as underground, coal miners were covered.
5. Death from any cause became compensable if the miner was totally disabled from pneumoconiosis at the time of death whether or not he had filed a claim for that condition.
6. A new presumption was added. If a miner was employed 15 years or more in an underground coal mine and a chest x-ray proved negative but other evidence demonstrated the existence of a totally disabling pulmonary or respiratory impairment, there would be a rebuttable presumption that he was totally disabled by pneumoconiosis, that his death was due to pneumoconiosis, or that at the

time of death he was totally disabled by pneumoconiosis. A wife's affidavit could supply that "other evidence" unless the miner was still living.

7. Claims could not be denied solely on the basis of x-rays but other evidence had to be considered, including a wife's affidavit or in case of death that of persons with knowledge of the miner's physical condition in addition to any medical evidence that might be available.
8. Benefits under Part B were specified not to be workers' compensation so that they could be paid in addition to social security disability benefits.
9. Benefits newly payable to children were retroactive to the date of enactment of eligibility if made within 6 months.
10. Claims filed after June 30, 1973 but before December 31 of that year would be paid by the Secretary of Labor but after that date by the responsible coal mine operator.
11. Part C was amended to require state laws to provide "adequate coverage" to children and collateral dependents as well as to miners and widows. Since state workers' compensation laws generally do not provide death benefits unless due to a work injury, this change virtually guaranteed that no state would qualify as providing "adequate benefits." Under the 1972 amendments, as noted above, death benefits are payable regardless of cause of death if the miner was "totally disabled" from pneumoconiosis at the time of death under the presumptions and definitions contained in that act.

12. Noncompliance by the state was further made more probable by a specific mandate requiring use by the states of the new definition of "total disability."
13. Claims under Part C based on the new presumption of the existence of pneumoconiosis and disability after 15 years employment in an underground coal mine would have to be filed within 3 years of last employment in case of a living miner or 15 years after last employment in case of death.
14. The effective period of Part C was extended from 7 years to 12 years.
15. An appropriation of $10 million was made to HEW to devise simple and effective tests to measure, detect and treat respiratory and pulmonary impairments of coal miners.
16. Claims which had been denied would have to be reviewed in light of 1972 amendments.
17. Amendments to Part B would be applicable to Part C, to the extent appropriate, except that employment after January 30, 1971 would not be included in determining application of 15 year presumption.
18. The Secretary of HEW was authorized to enter into contracts for examination and treatment of pulmonary diseases of active and inactive miners (§427). The original enactment had not provided for medical care.

Experience Under 1972 Amendments

As a result of the 1972 amendments, the Social Security Administration had to reopen 191,000 black lung cases. Of these, 110,000 were estimated to have been allowed (Committee Staff Report on the Disability Insurance Program, Committee on Ways and Means, supra, p. 416). Through June 30, 1973, 547,218 applications had been filed, of which 340,000 had been allowed (id. p. 415). This report indicates that the black lung program placed very severe strains on the Social Security Administration.

On July 1, 1973, the Labor Department assumed administration of the Act. However, claims continued to be filed in Social Security District Offices. The Labor Department paid claims out of public funds for the first six months. Thereafter, they were the responsibility of mine operators or their insurers unless (1) a responsible mine operator could not be found, (2) an operator failed to secure his liability, or (3) had not paid such benefit within a reasonable time. In case of the latter, the Department had a right of subrogation against the operator.

It was believed that most claims, particularly by inactive miners and their dependents, would have been filed under Part B and that only a limited number of claims would be filed by currently active miners. However, a relatively high level of claims continued, most by retired miners. By June 30, 1976, more than 92,000 claims had been filed - approximately 37,000 during the first year.

Difficulties developed in trying to identify a responsible operator. The law had been interpreted to mean the last "financially responsible" operator. Thus, a current operator could be held liable for benefits to a miner he had never employed but who had worked for a prior operator of the mine, sometimes many years ago. Such employment could be difficult to determine. Stricter medical rules had been promulgated by the Secretary of HEW for DOL claims than had previously been applicable by SSA. This also caused dissatisfactions. A backlog developed and the processing time for initially determining claims took over 600 days. (Black Lung Benefit Program, Office of Workers' Compensation Programs, U. S. Department of Labor, Task Force Report December 1976, p. vii, viii).

The rate of approval also dropped. The following table compares approval rates of the two administering agencies. Table is taken from "Black Lung - A Study in Occupational Disease Compensation" by Nancy Snyder, Employment Standards Administration and Mark E. Solomons, Office of the Solicitor, Department of Labor, Proceedings of the Interdepartmental Workers' Compensation Task Force Conference on Occupational Diseases and Workers' Compensation, 1976, 94th Congress, 2nd Session, Joint Committee Print, p. 762.

APPROVAL RATES

	04-30-71[1]	12-31-71[1]	12-31-72[2]	12-31-73[2]	12-31-74[1]	12-31-75[1]
SSA	49.0	49.5	49.3	62.1	64.2	N/A
DOL	-	-	-	-	18.7	13.5

1 Approval rates based on ratio of approvals to claims processed.
2 Approval rates based on ratio of approvals to claims filed.
N/A Not available.

A responsible operator was not notified that a claim was pending until the initial determination of compensability had been made. He then had 20 days (now 30, Rule 725.151) from the time of mailing the notice within which to admit liability or contest the claim. This did not provide sufficient time to investigate the claim, frequently involving employment long past and difficult questions of the nature and even the existence of disability. Many cases understandably were contested, especially since the constitutionality of some of the law's provisions were questioned.

All these factors gave rise to numerous complaints in the operation of the law. Payments out of public funds continued at a high level. In 1978, the federal government alone paid $1,022,625,000 (Workers' Compensation, 1978 Program Update, Daniel N. Price, Social Security Bulletin, October 1980, Vol. 43, No. 10, P. 8).

It was not long before further amendments to the law were being proposed. As had the Social Security Administration, the Labor Department was overwhelmed by the number of claims and the necessity of setting up procedures and training personnel to handle them. Coordination with another agency, the Social Security Administration, which still received the initial claim application, also presented problems in trying to find a responsible operator and trying to determine the physical condition of the miner, and its cause, upon which the claim was based.

Although broadening of definitions and presumptions in 1972 had served to aggravate fiscal and administrative problems, still broader presumptions and eligibility requirements were proposed. Early in 1976 such a bill passed the House (H. R. 10760, 94th Congress) but failed of enactment in the last days of adjournment in the Senate. It contained a provision for the payment of benefits to miners and their dependents after 30 years employment in an underground mine or 25 years in an anthracite mine regardless of the miner's actual physical condition. It also set up a special fund financed by a tax on coal for the payment of benefits.

After creating a system of compensation so burdensome and complex that the federal government was having difficulty in financing and administering it, there was a desire to transfer as much of the cost as possible to private industry.

1977 Amendments

This effort was continued early in 1977, resulting in the enactment of two amendments. One (H. R. 4544, Public Law 95-239, 95th Congress, effective March 1, 1978) again greatly broadened the scope of employments covered by the Act and the eligibility requirements under the Act. These broadened provisions were made retroactively applicable to Part B and Part C claims previously denied, as well as pending claims.

In 1972, these broadened liability provisions had also been made retroactive but were then payable out of public funds by the Social Security Administration. Now by means of obscure language inserted by the Conference Committee, which adapted language present in the Senate Bill (S. 1538, 95th Congress, 1st Session) reopened Part B claims originally made against SSA were apparently retroactively made the responsibility of mine operators or their insurers. This was a liability which did not exist when the policies were issued. The transfer of liability was intended to be achieved by providing that reopened Part B claims referred to the Department of Labor by the Department of HEW would be considered Part C claims and the date of request of review "shall be considered the date of filing" (Sec. 435).

The date of filing established the dividing line between Part C claims for which operators were responsible and Part B claims payable out of public funds. However, these claims had already been filed. Designating the request for review as the date of filing was a modification of actual facts by legislative action.

This legislation contained many other controversial provisions and few, if any, realized that this language was an attempt to place retroactive responsibility on operators and carriers for Part B claims that had been denied by Social Security. Operators and carriers were similarly retroactively newly made liable for pending and for reopened Part C claims which had been denied.

Among the broadened coverage and eligibility provisions of the 1977 legislation were the following:

1. Survivors would be entitled to benefits if the deceased miner was employed for 25 years or more before June 30, 1971 and died before March 1, 1978, the effective date of this Act [§411(c)].
2. The definition of miner was expanded to cover persons working in or around a coal mine or coal preparation facility and persons working in coal mine construction or transportation in and around a coal mine to the extent they are exposed to coal dust.
3. The rebuttable presumption of pneumoconiosis after 15 years of underground mining where the x-ray is negative is no longer limited to employment prior to June 30, 1971 (§430).
4. If there is no medical or other relevant evidence in the case of a deceased miner, the affidavit of a wife

or other person familiar with his condition shall be sufficient to establish total disability from pneumoconiosis and that death was due to that disease. This provision has resulted in awards where available medical evidence has been negative [Sec. 413(a)].

5. Where there is evidence of pulmonary impairment, the Secretary must accept interpretation of x-ray submitted in support of claim without rereading by experts, if (1) x-ray is of acceptable quality, (2) was taken by a qualified technician, (3) was interpreted by a board-certified or board-eligible radiologist and (4) claim is not fraudulently represented. Formerly, many x-rays had been found to be inaccurately initially interpreted [Sec. 413(b)]. Now rereading was prohibited.
6. Employment in mine shall not be conclusive evidence that miner was not totally disabled [§402(f)].
7. A miner is not entitled to benefits while engaged in coal mine employment, but shall be entitled to benefits if such employment terminates within 1 year after award of benefits becomes final.
8. The statute of limitations was broadened to run three years after medical determination of total disability due to pneumoconiosis. Previously, it had run from the date of discovery of total disability or from the date of death [Sec. 422(c)].
9. The definition of pneumoconiosis was broadened to cover "respiratory and pulmonary impairments arising out of coal mine employment." This vastly broadened the scope

of compensable conditions. "Pneumoconiosis" was thus further transformed into a "legal" rather than a "medical" disease.

10. Creation of a compensation insurance fund was authorized if insurance coverage is not otherwise available at reasonable cost (Sec. 433).
11. The Secretary of HEW must notify Part B beneficiaries of eligibility to receive medical benefits under Part C. The miner is given 6 months after notice to file a claim for medical services under Part C (Sec. 11).
12. The liability of subsequent operators to employees of prior operators was broadened (§422).
13. Penalties for not securing benefits were increased (Sec. 427).
14. The Secretary of Labor was authorized, in consultation with the Director of the National Institute of Occupational Safety and Health, to establish medical criteria for total disability. In the meantime, however, he was directed to apply the very broad "interim criteria" in effect for Part B claims on June 30, 1973, which had been superseded by subsequent HEW regulations. This served to broaden the scope of reopenings.
15. State compliance standards were modified not to require payment of benefits equal to those of the federal act where employment in a coal mine terminated before the Secretary's approval of the state act. Retroactive benefits has been one of the problems in connection with state compliance.
16. In the event payment of benefits could not be made from the Black Lung Disability Trust Fund, payments would be made as before the enactment of this Act (Sec. 20).

The Black Lung Disability Trust Fund was created by separate enactment (H. R. 5322, Public Law 95-227, 95th Congress, effective April 1, 1978). It was intended to relieve the federal government of the heavy financial burden it had assumed under the Black Lung Act. The fund was liable:

(1) for all claims by miners and their survivors in which the miner's last coal mine employment was before January 1, 1970; or

(2) where there was no coal miner operator required to secure benefits; or

(3) the operator had not commenced payment within 30 days of initial determination of eligibility; or

(4) the operator had not made payment within 30 days after it was due.

Thus, the Fund must make payment of benefits after an initial finding of eligibility even though a claim may be contested, but a responsible operator must refund such payments to the Fund if ultimately held liable. The retroactive features of the 1977 amendments, discussed above, present problems for operators where there is no coverage by the Trust Fund because there was employment after 1970 and no insurance because it was not required till after January 1, 1974.

The Fund was also liable for repayment to the Treasury for all amounts expended for claims under Part C paid before April 1, 1978, but need not pay or reimburse for benefits attributable to periods before January 1, 1974. The Fund was liable to reimburse the Treasury with interest also for any advances it may make to the Fund and for administrative expenses. Operators were also reimbursed for payments they had made before April 1, 1978 for claims of miners where last employment in the mines terminated prior to April 1, 1978.

The Fund was financed by a tax of 50 cents per ton of underground mined coal and 25 cents per ton of surface mined coal, but not to exceed 2% of the sale price of the coal. The law contained provision for tax deduction of such contribution. These were modified by H. R. 13167, Public Law 95-488, effective October 20, 1978.

Experience Under 1977 Amendments

These amendments immediately again created serious financial and administrative problems. Under the amendment, the Secretary of HEW had to notify all persons whose claims had been denied or were pending under Part B that upon the request of the claimant the Secretary of HEW would review the claim in the light of the new enactment or refer it to the Secretary of Labor to do so.

At the time of the 1977 amendment, SSA had about 165,000 previously denied Part B claims. Over 118,000 miners or survivors elected to have their claims reviewed under the new law. 82,434 elected SSA review and 36,104 chose Labor. As of September 19, 1979, SSA had approved 23,178 claims (28.1%). Reviewed claims which SSA had denied had to be referred to the Secretary of Labor. (Comptroller General Report to the Congress, July 28, 1980, H.R.D. 80-81, p. 1)

This Report, entitled "Legislation Allows Black Lung Benefits to be Awarded Without Adequate Evidence of Disability," found after reviewing a random sample of 200 cases, re-reviewed and approved by SSA, that "in 88.5 percent of cases, medical evidence was not adequate to establish disability or death from black lung" p. 8. The Report emphasizes that these approvals were not contrary to law, but were mandated by various provisions of the law, such as that requiring that disability or death from black lung be established on the basis of affidavits of spouses and other dependents, use of inconclusive medical evidence and presumptions based on years of coal mine employment.

Projecting the results of the sample, the Comptroller General found that $312.9 million were paid to claimants in retroactive lump sump payments and $69.8 million additionally will have to be paid annually in cases which were not supported by adequate medical evidence of disability or death caused by black lung. These payments, under the statute, would retroactively become the obligation of coal mine operators and their insurers to the extent responsible operators can be identified. However, the validity of this legislation and its interpretation is being contested in the courts.

The Labor Department was similarly faced with an explosion of claims. Not only did they have to decide pending claims, but review old claims they had denied and SSA claims that had been reviewed again but denied. This further strained their resources.

The 1980 Department of Labor Black Lung Report to the Congress, covering the calendar year 1979, indicates it had received 343,987 claims, of which 94% had been filed since the 1977 amendments, as indicated by the following table (p. 5 of Report):

Type of Claims	Claims Received July 1973-Dec. 1979	Claims Approved 1973-1979	Claims Denied 1973-1979	Undetermined Claims as of Dec. 31, 1979
Part C				
New	37,503	6,855	12,202	18,446
Old	125,229	34,121	23,472	67,636
Part B	70,571	7,971	14,827	47,773
Social Security Approvals	23,972	23,952	---	20
Medical Only	86,712	82,561	---	4,151
TOTAL	343,987	155,460	50,501	138,026

These figures have been brought up-to-date in a Report by Conning & Company to the American Insurance Association dated July 1981 in the table attached hereto.

ACK LUNG PROGRAM
CLAIMS STATUS REPORT

June 12, 1981

Type of Claim	Total Received	FY 80 Received	FY 81 Received	FY 81 Decisions	FY 81 Approvals	FY 81 Denials	Total to Date Decisions	Total to Date Approvals	Total to Date Denials	Undeci Claims
					PART C CLAIMS					
35 Part C	125,229			9,837	2,884	6,953	125,229	56,957	68,272	
New Part C	84,367	38,282	14,215	30,316	5,147	25,169	72,943	19,087	53,856	11,4
Subtotal	209,596	38,282	14,215	40,153	8,031	32,122	198,172	76,044	122,128	11,4
					PART B CLAIMS SSA Approvals - Part B Denials					
art B Denials	73,474	4,312	251	16,019	3,260	12,759	66,062	18,231	47,831	7,41
A Approvals	24,406	483	22	51	51	0	24,406	24,406	0	
Subtotal	97,880	4,795	273	16,070	3,311	12,759	90,468	42,637	47,831	7,41
					MEDICAL BENEFITS ONLY CLAIMS					
O, TF	100,243			14,020	14,020	0				
O, RO	16,733			1,644	1,644	0				
Subtotal	116,976	25,144	2,378	15,664	15,664	0	108,189	108,189	0	8,7
Grand Total	424,452	68,221	16,866	71,887	27,006	44,881	396,829	226,870	169,959	18,8

1/SSA Approved Claims that have not yet been placed into payment status.
2/Medical Benefits Only Claims that have not yet been placed into treatment status.
3/Unprocessed Medical Benefits Only Claims are not included in this number.

Conclusion

Payments by the federal government for Black Lung claims have exceeded $9 billion. Future liability on claims already allowed is estimated at several times that figure. This is a very costly program.

Coal mine operators and their insurers are now responsible for claims made after June 30, 1973 for employees employed in a mine after December 31, 1969. They mayalso be held liable for thousands of claims previously denied by the Social Security Administration and the Labor Department, but reopened under the retroactive provisions of the 1977 Act. This will depend on the interpretation and validity of that legislation as determined by the courts. The intent of the original law had been that claims involving long past exposures would be paid out of public funds.

The coal industry as a whole is responsible through the Trust Fund, maintained by the tax on coal, for claims involving employment prior to January 1, 1970 and for reimbursement of payments made out of public funds by the Labor Department. The financial condition of the Trust Fund is under review.

The Federal Black Lung program was intended to have been temporary. Responsibility was to have been returned to the state workers' compensation system. All states now provide black lung benefits. Most did so at the time the federal act was enacted but these did not apply (except Pennsylvania) to disability due to long past exposures. In Pennsylvania, a small pension from public funds has been payable for these old cases. No state law, however, has been certified as complying with the federal act. Some states originally tried to comply but qualifications for compliance were modified in 1972. Since then, they have not adopted provisions required by the federal act, which have caused difficulties at the federal level.

Federal difficulties have been seriously aggravated by twice changing eligibility requirements retroactively. Hundreds of thousands of claims have had to be reviewed again in the light of these changes. It was apparently thought that by loosening eligibility requirements, claim review would be speeded up. But each time new rules, new procedures, new interpretations, new litigation have resulted. As the 1980 Report of the Comptroller General (supra) indicates, many persons and their dependents are receiving and will receive benefits where there is no adequate medical evidence of disability or death from black lung.

Contraction of black lung from coal dust is a serious hazard in the coal industry. Miners perform difficult jobs in a difficult environment. This was especially true in the past. The dust hazard is being diminished by health measures and hopefully will eventually be eliminated or at least greatly reduced. Claims, however, have far exceeded what medical studies have indicated to be the incidence of the disease. Provisions in the law which encourage what are at best questionable claims cause delays for all and create serious problems in financing benefits.

Review of the law in the light of the facts might be warranted. At least, responsible operators and their insurers should be relieved of the retroactive liability which the 1977 legislation has created. If it is to be imposed upon the industry, it should be payable out of the Trust Fund so that all of the industry and not individual operators, who may not even have employed the miner, share the cost. Legislation to that effect passed the House at the last session of the Congress and a similar measure is under consideration.

Mr. DUNCAN. The Chairman had to step out but wouldn't it be more appropriate to settle this whole issue, the insurance policy liability and contracts, in the court system rather than in the Congress?

Mr. COAKLEY. There are currently, Congressman Duncan, cases pending in the courts, but we think it would have been more satisfactory not to have done it in the first place. It having been done, we don't know where this court will come out—they may throw the thing out. We would ask simply that justice be done, and the law be changed to do what should have been done in the first place.

Mr. DUNCAN. What is the status of the current litigation?

Mr. COAKLEY. They have not been resolved by appellate courts yet. They are still in the lower courts. This has only come about in the past year. They have not worked their way up yet.

Mr. DUNCAN. Do you know how many denied claims were reviewed under the 1977 amendments? And, if so, what proportion of those claims would you want transferred to the trust fund? If you don't have it you can supply it later.

Mr. KALMYKOW. There are figures, Mr. Chairman, involving approximately 8,000 claims which have been identified as being those of a responsible operator under what we call the part B claims and approximately a similar number under part C claims administered by the Department of Labor. Those are the claims that are involved under this current proposal.

Those are claims that have been reopened previously under the 1977 amendments.

Mr. DUNCAN. I think that is all. Thank you both for your testimony. We appreciate it.

Mr. KALMYKOW. May I point out what we are doing here is not trying to put any additional payments on the Government. It is merely a question of whether this industry as a whole will bear the cost for individual operators who may not even have employed the people for whom the claim is being reopened. That is really the issue that is presented to this committee.

Mr. DUNCAN. How much would the transfer of the claims cost the trust fund if they were transferred?

Mr. KALMYKOW. They are paying most of those claims now. It would not be any additional amount. It is a question of repayment.

Mr. DUNCAN. In what amount?

Mr. KALMYKOW. It is difficult to estimate. It depends on where you cut off.

Mr. DUNCAN. There is an amount somewhere that they will have to reimburse someone?

Mr. KALMYKOW. There have been some figures. I don't know exactly how firm they have been. The yearly cost would be somewhat less difficult. It depends on how it is allocated, how much you pay over the period of time.

Mr. DUNCAN. What figures are you talking about?

Mr. KALMYKOW. Approximately 8,000. As far as part B claims are concerned, each individual claim costs about $136,000 on a discounted basis and for part C claims about $105,000, estimated.

Mr. DUNCAN. You are talking about a lot of money.

Mr. **Kalmykow**. Down the pike. Not that much will have to be paid in any individual year.

Mr. **Duncan**. I thank you for your testimony.

Edison Electric Institute: Mr. John Kearney, senior vice president, energy and environmental activities.

You may proceed as you wish.

STATEMENT OF JOHN KEARNEY, SENIOR VICE PRESIDENT, ENERGY AND ENVIRONMENTAL ACTIVITIES, EDISON ELECTRIC INSTITUTE

Mr. **Kearney**. Thank you, Mr. Duncan.

I would like to introduce Mr. John Gibson, who is a consultant to the Institute in matters that we are going to discuss today. We have filed with the committee a statement and if it pleases you we would like to have that in the record and I would just like to brief it.

Chairman **Rangel**. Your entire statement will be in the record and you may summarize it.

Mr. **Kearney**. I am the senior vice president of the Edison Electric Institute which is a national association of electic utility companies.

Our members provide approximately 65 million electric consumers comprising 99 percent of all those that are served by the investor-owned segment of the industry.

We are here today because we have a very direct and substantial interest in the proceedings and the funding of this fund because of the enormous amount of coal that is used by EEI member companies.

Seventy-seven percent of the electricity that is generated in this country, consumed in the country, is provided by member companies of EEI and our segment alone burns 68 percent of all the coal that is produced in the United States.

The Black Lung Disability Trust Fund in only a few years has accumulated a staggering deficit of $1 billion and unless changes are made the deficit will continue to grow. In our view it is oversimplistic and wrong to approach the question of solvency strictly by increasing the taxes on coal. We believe that the threshold questions are whether or to what extent deficiencies exist in the benefit system itself and if so, whether there are checks that will remove or substantially lessen the deficiency in the trust fund without the need to increase taxes on coal.

Before we turn to these matters however, it is important to note the impact of any increased tax on coal. Although the so-called black lung tax is paid into a fund by the coal operators as a practical matter it is ultimately borne by residential and business consumers of electric power. The experience of EEI member companies demonstrates that the coal operator as part of his selling price passes on the tax as well as the administrative cost associated with it to its customer, the electric utility industry.

Although there are some variations from State to State under existing regulations, the fuel adjustment clause permitted by the public utility commissions generally provides that approximately 80 percent of fuel costs are passed onto the consumer by the electric utility without the need for a rate hearing.

The remaining 20 percent is generally subject to rate hearings before the State commissions. In either case, there will be a significant delay before the utility can recover the increased cost. The proposed tax on coal is ultimately not paid by the coal operator but by the electric consumer and would have the further effect of exacerbating the already precarious financial health of the electric utility industry.

As you know, at present the coal operator is responsible to collect 25 cents per ton of surface-mined coal and 50 cents for subsurface mined coal. Various formulas have been proposed for increasing these taxes. They include extremely costly proposals in the Omnibus Budget Reconciliation Act of 1981 to raise the tax on both surface and subsurface mined coal to $1 per ton. Although that proposal was rejected it could not yet be considered a dead issue. The costs involved are very steep.

Based on current projections in 1982, investor-owned electric utilities are expected to consume 648 million tons of coal of which it is estimated 403 million will be surface mined and 245 million will be subsurface mined.

If a tax of $1 per ton were imposed for that year on both surface and subsurface mined coal this would amount to a total increase in the tax ultimately paid by the electric consumer of $425 million. Even this projected increase understates by approximately $100 million the increase likely to be passed onto consumers of electricity. For it omits that segment of electric producers which are not investor-owned electric utilities. If we took those into account and assumed their consumption was similar to the ratio of EEI member companies, as I say that would increase the tax another $100 million so that in 1982 consumers would be paying over a half a billion dollars increase in the tax.

We have also heard about a slightly less burdensome proposal that has arisen in conversations with the Department of Labor and without going into the detail of that because of the time of day, that increase would be approximately half of the $425 million figure, about a $233-million increase in the tax that we have already paid.

Again, it would not take into account the portion that is paid by the noninvestor members of the system.

It is also important to keep in mind that we addressed only the cost of the tax on coal for trust fund purposes. Another substantial element of cost, however, emanates from the coal operator's direct liability to his employees. This, too, will be reflected in the cost of producing the coal and, hence, in the price paid by the electric consumer.

Moreover, the amount of coal produced will increase each year, reflecting the continued shift from oil and gas to coal, but also reflecting the expected increase in the Nation's need for energy.

We consumed about 574 million tons of coal in 1980 and that will increase in 1985 to 733 million and in 1989 to 928 million tons of coal.

If you translate increased taxes borne by the electric consumer, the prospects are indeed troubling.

The spiraling benefits paid under the act are equally troubling. What is perhaps most ominous is the Comptroller General's observation in his 1980 report to Congress that the granting of unsupportable benefits under the act did not arise through a failure of the Government agency involved; rather, such permissiveness in granting benefits was mandated by the law itself.

We support the objectives of the act and want every miner with a legitimate claim to receive the benefits to which he is entitled. But we believe, along with the Comptroller General, that the benefits are all too frequently paid on unproven or otherwise improper claims. Much of the problem has arisen through an expansion of the term "miner" which, in turn, has extended coverage to people who have no realistic exposure to black lung hazards.

With eligibility thus assured, the claimant has often secured approval of benefits on the basis of broad presumptions favoring eligibility that has become outmoded, abusive evidence that falls short of adequate verification. Although the original 1969 act defined "miner" solely in terms of one "who is, or was, employed in an underground coal mine," the 1972 and 1977 amendments held the definition to apply to persons working "in or around" a coal mine or coal preparation facility, transportation in or around the coal mine or in coal mine construction.

Similar expansion of scope has been given to the definition of the disease for which compensation is being given. Normal pneumoconiosis, which was initially defined to mean a chronic dust disease of the lung arising out of employment in a coal mine, now embraces its sequelae, including respiratory and pulmonary impairments arising out of coal mine employment.

The results have been that workers with only the most remote exposure to coal dust in occupations far removed from the conventional notion of coal mining become eligible for benefits upon showing little more than respiratory ailments which may even arise from extensive smoking rather than the nature of their employment. Indeed, that was the testimony of NIOSH representatives before this subcommittee last July.

An example from our industry readily comes to mind. A person who rides in an air-conditioned vehicle which facilitates the unloading of unit trains would presumably be eligible for benefits under the act. Because of the minimal nature of the proof needed to establish a claim, the fact that the person in the example has virtually no exposure to coal dust in all likelihood would not be a bar to granting the black lung benefits.

Chairman RANGEL. How many cases of that do we have?

Mr. KEARNEY. We have no figure on that, Mr. Chairman. But I think what we are saying is that, in our judgment, under the interpretation of the act, that that is possible. Accordingly, we would propose that the definition of miner be narrowed; that the deficiency in the current standard of "miner" stems from vague standards in at least three areas:

One, employment, not only in but around a coal mine or coal preparation facililty; two, inclusion of a coal preparation facility even if it is unconnected to a coal mine; and three, inclusion of coal mine construction and transportation if there is the least bit of exposure to coal dust.

My statement gives a suggestion that we have as to how language could be provided in accordance with the observations that we just made.

Chairman **Rangel**. That is in your statement, the definitions?

Mr. **Kearney**. Yes, sir. We suggest the amending of section 402(d), which would provide for the definition as I have just suggested. I could read it, but it is in the record.

In summary, what has happened is that a program designed to compensate miners for a serious infirmity arising out of employment in the coal mines has leaped far beyond the mandate and in the process has contracted an enormous deficit.

The cure is not to pump money into the trust fund, for the energy consumer should not be saddled with the burden of subsidizing a program that apparently has run wild. It is important to restore the black lung program to its original purpose. Once this is done, we believe the deficiency the fund now faces will be substantially diminished. In our judgment, it would be advisable to gain experience under the arrangement without any preconception that the financial solvency can be restored only through a substantial increase in taxes on coal.

We appreciate this opportunity to appear before you. We will be pleased to try to answer your questions.

[The prepared statement follows:]

STATEMENT OF JOHN J. KEARNEY, SENIOR VICE PRESIDENT, ENERGY AND ENVIRONMENTAL ACTIVITIES, EDISON ELECTRIC INSTITUTE

My name is John J. Kearney. I am a senior vice president of Edison Electric Institute, with responsibility for energy and environmental activities.

This statement is submitted on behalf of the Edison Electric Institute (EEI), which is the principal national association of investor-owned electric utility companies. Its member companies serve approximately 65,600,000 electricity consumers, comprising 99 percent of all customers of the investor-owned segment of the electric utility industry.

EEI and its members have a direct and substantial interest in the procedures and funding of the Black Lung program because of the enormous amount of coal used by EEI members. Seventy-seven percent (77%) of all electric energy consumed in the United States is produced by investor-owned utilities, essentially by EEI members. That segment alone burns sixty-eight percent (68%) of all coal produced in the United States.

The Black Lung Disability Trust Fund in only a few years has accumulated the staggering deficit of one billion dollars, and unless changes are made this deficit will continue to grow. In our view it is overly simplistic and wrong to approach the question of solvency by increasing taxes on coal until contributions catch up with benefits. As we shall show on the basis of EEI experience, any such increases will be costs ultimately paid by the electric consumer. Where, as here, the amount of benefits paid has expanded far beyond the expectations of Congress, the threshold questions are whether and to what extent deficiencies exist in the benefit system itself, and if so, whether their correction will remove or substantially lessen the deficit in the Trust Fund without the need to increase taxes on coal.

We recognize that this Subcommittee does not have authority to draft legislation which would reform the scope and procedures of the Black Lung Benefits Act. We think it important, however, that an explanation of the causes of the current deficit be presented here, because of the pivotal role of this Subcommittee in the development of any legislation on this matter.

Before we turn to those matters, however, it is important to note the impact of any increased tax on coal. Although the so-called Black Lung tax is paid into the Fund by the coal operator, as a practical matter it is ultimately borne by the residential or business consumer of electric energy. The experience of EEI members demonstrates that the coal operator, as part of his sales price, passes on the tax as well as the administrative costs associated with it, to his customer, the electric utility. Although there are some variations from state to state, under existing regulations the fuel adjustment clauses permitted the electric utility by the public utility commission generally provide that approximately 80% of the fuel costs are passed on to the consumer without the need for a rate hearing. The remaining 20% is generally subject to rate hearings before the state commission. In either case there will be a significant time lag before the utility can recover the increased costs. That is, the proposed tax on coal would ultimately not be paid by the coal operator, but by the electricity consumer and would have the further effect of exacerbating the already precarious financial health of the electric utility industry.

At present, the coal operator is responsible for collecting $.25 per ton for surface-mined coal, and $.50 per ton for subsurface-mined coal. Various formulas have been proposed for increasing these taxes. They include the draconian proposal set forth in The Omnibus Budget Reconciliation Act of 1981 to raise the tax on both surface and subsurface-mined coal to $1.00 per ton. Although that proposal was rejected, it cannot yet be considered a dead issue. A proposal which is only slightly less drastic has recently arisen in conversations with officials of the Department of Labor, who have indicated that the Department may favor doubling the existing taxes, i.e., raising the tax on surface-mined coal to $.50 per ton and on subsurface-mined coal to $1.00 per ton.

The costs involved in both proposals are steep. Based on current projections, in 1982 investor-owned electric utilities are expected to consume 648,096,000 tons of coal, of which it is estimated that 403,163,808 tons will be surface mined, and 244,332,192 will be subsurface mined.[1/] If a tax of $1.00 per ton were imposed for that year on both surface and subsurface-mined coal, this would amount to a total increase in the coal tax ultimately paid by the electric consumer of $424,538,952. Of that amount, $302,372,856 would be attributable to surface-mined coal (403,163,808 tons at an additional $.75 per ton) and $122,166,096 to subsurface-mined coal (244,332,192 tons at an additional $.50 per ton).

But that projected increase of 425 million dollars understates by over 100 million dollars the increase likely to be passed on to the ultimate electric consumer, for it omits the segment of electricity producers which are not investor-owned electric utilities. As previously noted, 77 percent of the electricity production in the United States is generated by investor-owned electric utilities, which consume 68 percent of the coal produced. The remaining 23 percent of the electricity production is provided by essentially three groups, i.e., public power entities such as TVA, rural electric cooperatives,

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[1/] The source of the amount of projected coal consumption by investor-owned electric utilities is Table 10, 1980 Summary of Projected Peak Demand, Generating Capability, and Fossile Fuel Requirements of the Regional Reliability Councils of NERC, July 1980. The respective percentages of surface-mined and subsurface-mined coal assume the same division (62.3% surface mined, 37.7% subsurface mined) for the utility industry as is projected for the entire coal industry.

and municipal power systems, such as those in Los Angeles and Jacksonville, Florida. Assuming that these groups consume coal in the same ratio as the EEI members, their consumption would account for an additional 20% of the coal produced in any year.

The inclusion of these groups would bring the total increase in cost to the consumer in 1982 to well over a half-billion dollars. They would consume an additional 190,616,471 tons of coal, of which 118,754,061 tons would be attributable to surface-mined coal, and of which 71,862,410 tons would be attributable to subsurface-mined coal. The increase in the coal tax attributable to this additonal consumption is $124,996,751. When added to the tax of $424,988,952 allocable to the investor-owned utilities, the tax on coal for 1982 which would ultimately be borne by the electric consumer is $549,985,703.

If instead of imposing an across-the-board tax of $1.00, the existing taxes were doubled (to $.50 per ton for surface-mined coal and $1.00 per ton for subsurface-mined coal), the costs are similarly unsettling. The increased tax on coal expected to be consumed by the electric utility industry in 1982 would amount in that case to $223,107,048, of which $100,940,952 would be attributable to surface-mined coal, and $122,166,096 attributable to subsurface-mined coal. These figures, too, understate the costs, and should be increased to reflect taxes on the additional coal consumed by the electricity producers other than the investor-owned utilities.

It is important to keep in mind that we have addressed only the costs of a tax on coal for Trust Fund purposes. Another substantial element of cost, however, emanates from the coal operator's direct liability to his own employees. This, too, will be reflected in the cost of producing the coal, and hence in the price paid by the electric consumer.

Moreover, the amount of coal production will increase each year, reflecting the continuing shift from oil and gas to coal, and also reflecting the expected increase in the nation's need for energy. The electric utility industry has projected that its consumption of coal will increase from the 573,675,000 tons it used in 1980, to 733,124,000 tons in 1985, and to 927,850,000 tons in 1989.[2] Translated into increased taxes borne by the electric consumer, the prospects are indeed troubling.

The spiralling benefits paid under the Act are equally troubling. Claims experience was analyzed by the Comptroller General in 1980. The Comptroller General's Report to the Congress of July 28, 1980, entitled "Legislation Allows Black Lung Benefits to Be Awarded Without Adequate Evidence of Disability," reviewed claims approved by the Social Security Administration, one of the two agencies authorized to re-review previously denied black lung claims as a result of more liberal standards created by the 1977 amendments to the Federal Coal Mine Health and Safety Act. He concluded that in 88.5% of the cases in which the Social Security Administration reviewed and approved black lung claims, the evidence was not adequate to establish disability or death from black lung. This resulted, according to the Report, in retroactive lump sum payments of $312.9 million, and annual payments of $69.8 million, which were not based on adequate medical evidence of disability or death from black lung. What is perhaps most ominous is the Comptroller General's observation that this permissiveness did not arise through a failure of the Social Security Administration to obey the law. Rather, such license was mandated by the law itself.

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[2] These projections are based upon the Summary of Projected Peak Demand, etc., described in footnote 1.

We support the objectives of the Act, and want every present or former miner with a legitimate claim to receive the benefits to which he is entitled. But we believe, along with the Comptroller General, that benefits are all too frequently paid on unproven or otherwise improper claims. Much of the problem has arisen through an expansion of the term "miner," which in turn has extended coverage to persons who have no realistic exposure to black lung hazards. With eligibility thus assured, the claimant has often secured approval of benefits on the basis of broad presumptions favoring eligibility that have become outmoded and the use of evidence that falls far short of adequate verification.

Although the original 1969 Act defined and thus conditioned the eligibility of a "miner" solely in terms of one who "is or was employed in an underground coal mine," the 1972 and 1977 amendments ballooned the definition to apply to persons working "in or around" a coal mine or coal preparation facility, transportation in or around a coal mine, or in coal mine construction. Specifically, the definition of miner contained in Section 402(d) now reads:

> (d) The term "miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

A similar expansion of scope has been given to the definition of the disease for which compensation is being given. "Pneumoconiosis," which was initially defined to mean "a chronic dust disease of the lung arising out of employment in a . . . coal mine," now embraces "its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."

The result has been that workers with only the most remote exposure to coal dust, in occupations far removed from the conventional notion of coal mining, become eligible for benefits upon a showing of little more than respiratory ailments which are far more likely to have arisen from extensive cigarette smoking than the nature of their employment. Indeed, a representative of NIOSH so testified before this Subcommittee in July of this year. Two examples from our industry readily come to mind. A person who rides in an air-conditioned vehicle which facilitates the unloading of unit trains would presumably be eligible for benefits under the Act. Similarly, a secretary who works in an air-conditioned office contiguous to a coal facility would appear to qualify. Because of the minimal nature of the proof needed to establish a claim, the fact that the persons in those two examples have virtually no exposure to coal dust in all likelihood would not be a bar to the granting of black lung benefits.

Accordingly, we would propose that the definition of miner be narrowed to respond to real rather than imagined perils. The deficiencies in the current definition of "miner" stem from vague standards in at least three areas: (1) employment not only in but "around" a coal mine or coal preparation facility; (2) inclusion of a coal preparation facility even if it is unconnected to a coal mine; and (3) inclusion of coal mine construction and transportation if there is the least bit of exposure to coal dust.

Specifically, we propose the following amendment to Section 402(d) of the Act:

> (d) The term "miner" means any individual who works or has worked in the extraction of coal from a coal mine or who has worked in the preparation of coal in a coal preparation facility in conjunction with a coal mine or mines or who works or has worked

> in the construction of coal mines to the
> extent such individual was exposed to
> hazardous levels of coal dust as a result
> of such employment.

To bar unwarranted administrative expansion of this definition, we would also incorporate specific limitations in the language of Section 402(d). Thus we would propose that the definition expressly exclude supervisory and administrative functions which are not performed at the site of a coal mine, functions performed by clerical personnel, and the transportation of coal after it has been extracted and prepared.

Appropriately limited definitions will, we believe, go a long way towards removing the basis for unfounded claims or similar misuse of the benefit system. But the problem is exacerbated by the presumptions and loose evidentiary standards that favor the granting of baseless or questionable claims.

Two major presumptions, based on 10 years' employment in coal mining, were established in the 1969 legislation and expanded in the 1972 amendments. A coal miner with pneumoconiosis who had ten or more years of employment in a mine was presumed to have contracted pneumoconiosis out of his coal mine employment, and a coal miner who died of a respiratory disease and who had ten or more years' employment in a mine was presumed to have died as a result of pneumoconiosis. The 1972 amendments added a third presumption. If a miner was employed in a mine for 15 years or more and a chest x-ray was negative for complicated pneumoconiosis but there was other evidence of totally disabling respiratory or pulmonary damage, the miner was presumed to have been totally disabled by or his death caused by pneumoconiosis.

The salient fact is that as a result of substantial progress in the reduction of exposure to coal mine dust and the availability of medical detection techniques that can identify the presence of complicated pneumoconiosis, any need to rely on the 10- and 15-year presumptions has vanished. Particularly in the case of miners currently at work or whose employment has terminated in recent years, legitimate evidence is available which can distinguish legitimate claims from unfounded ones.

But there must be a recognition of the sharp line between legitimate and spurious evidence. The 1977 amendments provided two evidentiary techniques plainly open to abuse. The Act now permits a claim on behalf of a deceased miner to be established solely on the basis of an affidavit submitted by a spouse or other beneficiary. Given the broad definition of pneumoconiosis to include respiratory ailments, benefits have been granted on the basis of such affidavits claiming that the miner had "shortness of breath" or similar infirmities, when no other evidence was available. The Comptroller General found that of 131 survivor claims, the Social Security Administration established disability in 78 cases on the basis of affidavits--and in 68 of those cases the affidavit was filed by the one to receive benefits. As the Report stated (p. 9), "Statements by survivors saying a miner 'coughed and spit,' had 'miner's asthma' or had 'shortness of breath' were accepted as proof of disability when medical evidence was not available." Plainly such affidavits suffer from being both vague and self-serving, and should not be sufficient to establish a claim.

Even more of a travesty is the provision of the 1977 amendments which prohibits the Government from re-reading a claimant's x-ray if it had been read by a radiologist or technician. Presumably the only reason for such a restriction was that too many claims were being denied upon the basis of review of the x-ray. Plainly the opportunity for abuse of the use of x-ray is rampant in such a situation, and it is senseless--and perhaps unprecedented--for the Government to be required to accept a claimant's word while its own experts are required to remain mute. Certainly elementary fairness requires that a claim be scrutinized and accepted only if it can withstand evidentiary challenge.

In summary, what has happened is that a program designed to compensate miners for a serious infirmity arising out of employment in the coal mines has leaped far beyond that mandate and in the process has contracted an enormous deficit. The cure is not to pump billions of dollars into the Trust Fund, for the energy consumer should not be saddled with the burden of subsidizing a program which has run wild. Instead, it is important to restore the Black Lung program to its original purpose. Once that is done, we believe that the deficit the Fund now faces will be substantially diminished. In our judgment it would be advisable to gauge experience under that arrangement without any preconception that financial solvency can be restored only through a substantial increase in taxes on coal.

Chairman **Rangel**. Mr. Duncan.

Mr. **Duncan**. Mr. Chairman, I do not think I have a question, but I do want to thank the gentlemen.

Chairman **Rangel**. I read the entire statement. It is very good. Thank you.

Could you share with us what happened when we first passed the 1978 bill with the tax and what impact it had on consumers, and whether or not you have given some estimates as to what the doubling of the tax would do as it relates to the increase in cost of electricity?

Mr. **Kearney**. As I indicated in my statement, it is our estimate that in the year 1982 alone, it would result in an increase of $500 million that would have to be paid by the consumer. It is difficult to take that figure and make an average out of it for a residential customer or for a business customer because of the different rates, the different manner in which they use electricity, and also, it would be difficult because different utilities use different types of fuels.

I think, Mr. Chairman, that the bottom line is that I think what I would call enlightened management in the utility industry believes that any increase in cost to our customers should be viewed very strongly and that we should protest in cases where we see that there are costs that we do not think our customers should bear. That is what we are trying to do.

Chairman **Rangel**. The utilities have no problem politically telling us, the Congress, where those costs would be, whether they are residential consumers or commercial consumers. You don't have any of that type of thing.

Mr. **Kearney**. I am not so sure I understand the import of your question.

Chairman **Rangel**. I am trying to get some estimate that, if we double the taxes, what the impact would be on the average residential consumer, and I thought you might have something based on the initial tax that went in.

Mr. **Kearney**. No, sir. I don't have that available.

Chairman **Rangel**. We know that ultimately we passed on it, but you don't have it broken out?

Mr. **Kearney**. No, but let me say in the last 10 years, Mr. Chairman, the cost of electricity has doubled, and during that period the cost of fuel, that component of electricity, has gone up four times, so you can see that any increase in the cost of fuel is getting to be very significant. It is a little here and a little there, and it all adds up.

Chairman **Rangel**. Con Edison supplies energy for us in New York, so I know exactly what you are talking about.

We will submit other questions for the record.

Have you any suggestions that you could forward to us as to how we could avoid claims that are not legitimate? We talk broadly about the fact that the statutes are too loose. If you have anything, or you think about it, just forward it and we will see that the right committee gets it.

The staff points out on one page of your testimony there are some mathematical errors. For example, your figure is $302,822,856, but apparently should be $302,372,856.

Would you look into that and correct it?

Thank you for your testimony. We hope you continue the dialog.

We now will be hearing from the Black Lung Association panel, and we do have a limitation of 5 minutes on the oral testimony, with the understanding that whatever written testimony is available will be entered into the full record.

So, let us now hear from Bill Worthington, chairperson of the National Black Lung Association; Carl Eldridge, president of the Kentucky Black Lung Association; Bill Bowman, chairperson of the Virginia Black Lung Association; from the Chicago Area Black Lung Association, Paul Siegel, executive director, and he will have Richard Ricono, chairman, with him; from the West Virginia Area Black Lung Association, Bill Bailey, president; Pennsylvania Black Lung Association, Wolfe Huber, chairman.

Are these people present? They are not present? Just come on up and sit down and we can get started with those that are here, and we will wait for the others to join us.

Those lights that light up, when the orange one lights, it means there is 1 minute left of your testimony, and the red is a signal that your time has expired. We find that easier than interrupting your testimony.

Again, I would like to thank all of you for coming down to share your thoughts with us and to recognize that your full testimony will be in the record.

The National Black Lung Association, Bill Worthington.

STATEMENT OF LAURA BOWERS, ATTORNEY, APPALACHIAN RESEARCH DEFENSE FUND, ON BEHALF OF WILLIAM WORTHINGTON, CHAIRMAN, NATIONAL BLACK LUNG ASSOCIATION

Ms. **Bowers**. My name is Laura Bowers. I am an attorney with the Appalachian Research Defense Fund, which is legal services with the main office in Prestonburg, Ky. I would like to introduce the panel to you.

Mr. Worthington will be here very shortly. He is chairman of the National Black Lung Association.

I would like to also thank you very much for your compassion and consideration for the coal miners and the people directly affected by the disease called black lung.

First of all, to the far left of me is Bill Bailey from West Virginia. Sitting directly to my left is William Anderson from Logan, W. Va. Sitting to my right is Bill Bowman from Virginia. Next to him is Paul Siegel from the Chicago Area Black Lung Association. Next to him is Wolfe Huber from the Pennsylvania Black Lung Association. Mr. Huber is also very strongly involved in the United Mine Workers.

You have our written testimony from the National Black Lung Association, I assume, and that testimony is a part of the record. Therefore, to begin, I will read Mr. Worthington's statement.

The National Black Lung Association, regarding the insolvency of the black lung trust fund, takes the position that the black lung trust fund can best be bolstered by increasing the amount of money responsible operators pay for tonnage and increasing the amount that they must pay the black lung trust fund back when they have finally been found liable for a claim.

That is, it is unreasonable that the responsible operator only has to pay 6-percent interest on his delinquency to the trust fund while the trust fund must, in cases where it is necessary, borrow money for the trust fund from lending institutions at the going interest rate.

By allowing such a contrast, the Department of Labor has made it possible for the responsible operator to actually make money on his own money while allowing the Government to subsidize this program, which was originally instituted to make the coal industry bear the burden of black lung.

We started lobbying in 1969 for passage of the bill. We worked very hard in the 1972 amendments and 1977 amendments. It was our understanding that this committee's jurisdiction only went to the solvency of the black lung trust fund rather than a discussion as to the regulations. What we have heard here today, however, has been some discussion on the solvency of the black lung trust fund and much discussion on the amended criteria of the regulations.

I would only like to say that the medical regulations are—there must be medical proof. The presumption is only a causal connection. The only thing presumption does is allow a causal connection between medical evidence and the years of coal mining employment to prove disability.

I just insert that because I heard over and over again that you can get a claim with no medical evidence. That is simply not so. My light is on, so I will leave you——

Chairman RANGEL. Your full statement will be in the record.

[The prepared statement follows:]

STATEMENT OF WILLIAM WORTHINGTON, CHAIRMAN, NATIONAL BLACK LUNG ASSOCIATION

The National Black Lung Association, regarding the insolvency of the Black Lung Trust Fund, takes the position that the Black Lung Trust Fund can best be bolstered by increasing the amount of money responsible operators pay for tonnage and increasing the amount that they must pay the Black Lung Trust Fund back when they have finally been found liable for a claim. That is, it is unreasonable that the reponsible operator only has to pay 6 percent interest on his delinquency to the Trust Fund while the Trust Fund must, in cases where it is necessary, borrow money for the Trust Fund from lending institutions at the going interest rate. By allowing such a contrast, the Department of Labor has made it possible for the responsible operator to actually make money on his own money while allowing the government to subsidize this program which was originally instituted to make the coal industry bear the burden of black lung.

After having spent eleven years working with legislative efforts regarding black lung, beginning with the initial bill in 1969, through the 1977 Amendment, the National Black Lung Association is convinced that restricting standards for eligibility is simply not the answer. Time and time again legislative bodies have attempted to right the inequities that have occurred as a result of some of the agency's practices and the refusal of the agency to grant benefits to those who are most deserving of them. Prior to the 1977 Amendment, widows were often unable to procure black lung benefits when, for instance, their husband was killed in a mining accident or when the statute of limitations had run. Also, in many cases there was no medical evidence because the miner had died before the inception of the new medical understanding of the phenomenon of black lung. The 1977 Amendments were designed by Congress and were implemented by the Department of Labor and Social Security to right some of those wrongs. If stricter regulations are imposed, then more wrongs will be committed and a future Congress will once again convene to right those wrongs. In terms of economy of time and money, that is a foolish way to improve any situation. Therefore, we strongly oppose the strengthening of the medical regulations. As a matter of fact under the permanent medical standares less than 10 percent the people who are applying are being awarded benefits anyway. The 1977 Amendments were designed to fully carry out the intent of Congress in 1969 and for those people who were to be brought under review again in the 1977 Amendments, that intention has been generally carried out.

It makes good economic sense to bolster the Trust Fund itself. It was never intended that the Trust Fund should become a federal subsidy; rather it was intended that the coal operators pay the full price for black lung disease. Originally, in 1969 it was thought that black lung would be entirely eradicated in 1981. Obviously given the large amount of State Workmen's Compensation and federal benefits, that aim has been nowwhere near satisfied. As long as the mines continue to be an environment which ultimately leads to the death of many miners, they should be compensated. They should be compensated not by the federal government or state government, but by the people responsible for the environment in those mines. The coal industry profits immensely from the labor of the miner, and it is only proper that the miner should, sometimes too late, attain some degree of financial stability later on in his life. People who are injured by the coal mines should be properly compensated.

The Black Lung Bill originated in 1969 after it came to the attention of the nation that the miner's plight was dreadful. While conditions have improved to some extent, miners are still contracting and dying from black lung. Until the environment of the coal mines is a completely safe place, the miner should continue to be compensated for his occupational disease.

The miner should not be caught in the middle of an attempt to bolster the economic situation of the Trust Fund. He is not responsible for the Trust Fund being in the economic chaos that it is in, and should not have to pay not only for having worked as a coal miner all his life, but also for the economic ineptitude of the bureaucracy. It is the responsibility of the Administration and the Department of Labor to improve the financial situation of the Trust Fund so that the clear intent of Congress can be carried out.

In conclusion the National Black Lung Association stands firmly behind the principals that coal miners should be compensated for their occupational disease and that that compensation should be borne by the responsible operator. The federal government has a responsibility to the Trust Fund. In simple legalistic terms, a Trust Fund has the responsibility of remaining solvent. The trustees are responsible for the solvency of any Trust Fund. Allowing a responsible operator to reimburse the Trust Fund at an interest rate of 6 percent, while at the same time the Trust Fund, itself, having to borrow at an interest rate which is common to all institutions which have to borrow, is irresponsible. Increasing the rate on tonnage and making it less profitable for the responsible operator to put off making payments to the miner by increasing the interst rate he must repay to the Trust Fund would at least begin to solve the problem which is before the Committee. Thank you for the opportunity of being allowed to testify today.

Chairman RANGEL. I did want that point sharpened because that was my understanding.

Ms. BOWERS. Yes, it is absolutely true, Chairman Rangel. There are not cases being allowed on the basis of no medical evidence. There is no automatic entitlements. These people who are disabled are severely disadvantaged medically. The presumption is only a causal connection. It is not an absolute. I had to say that because the testimony was so——

Chairman RANGEL. I am glad you did.

Who will be testifying next, Kentucky Black Lung, Carl Eldridge?

Ms. BOWERS. Mr. Eldridge is out of the room now. Mr. Siegel from Chicago has a few things to say.

Chairman RANGEL. Very good.

STATEMENT OF PAUL SIEGEL, EXECUTIVE DIRECTOR, CHICAGO AREA BLACK LUNG ASSOCIATION

Mr. SIEGEL. Thank you, Mr. Chairman.

We came here for the purpose of complimenting this committee for holding hearings on what we think is a very vital matter and one that can be resolved very practically—the solvency of the trust fund.

So, we can only express our deep disappointment that the Reagan administration is not here and our deeper disappointment that the hearings have been used so much as a forum to attack the medical standards, and in our opinion to attack the very soul of the black lung program.

We just wonder if the positions outlined by the Coal Operators Association represent the positions we will be seeing later on by the Reagan administration. These positions seem to solve the problems of solvency by trying to destroy the program.

I just want to stress that while we did not come here for the purpose of testifying about medical regulations, there are people here who have worked with many claims. Of course, there is really very much another story, another side to the story to this picture of some kind of a giveaway program. I will try to read sections of the testimony we had prepared.

In relation to the question of solvency, we wish to state our enthusiastic support of the position taken by the National Black Lung Association and others that the trust fund be made solvent by seeing to it that the cost be borne by the industry which is responsible for maintaining the healthiest possible work environment.

We favor doubling the tax on coal which supports the fund, and we favor raising the interest rate at which responsible operators will have to reimburse the trust fund for interim payments made by the fund as a result of lengthy appeals by responsible operators in those cases where they, rather than the fund, are individually liable.

We would note here that previous testimony before this committee has indicated that raising the levy which supports the fund would not adversely affect the production of coal. In relation to the future of the trust fund, we would note the following:

One, the law provides that miners who last work after 1970 will not be paid from the fund so that in years to come the number of new claims won and paid out of the trust fund will obviously be heavily reduced.

Two, a great number of those receiving benefits from the fund—people who worked prior to 1970—are quite advanced in age so that payment to these older generations of disabled miners will clearly soon peak and then decline due to the obvious fact of the ever-increasing mortality of this finite group of older people.

Three, the very large expenditures for lump sum payments in the years immediately following the 1978 amendments, which involved many cases originally filed before the trust fund even existed, represent the backlog of old claims that will not exist in the future.

It would thus appear that the issue of the black lung disability trust fund should not be a terribly explosive or controversial one or be seen as an insurmountable problem. We simply need to bolster the fund by raising the tax on coal and to stop encouraging, with low-interest rates on reimbursement of the fund, responsible operators to appeal virtually every individual case, and thus relieve some of the pressure of interim payments from the fund. Then in the near future, new expenditures by the fund will be dramatically and inevitably reduced for the reasons outlined above.

Unfortunately, however, the current problems of the fund, which in essence stem from years of neglect—I see the light is on. We said unfortunately the funds are being used as a forum to attack medical standards.

We would just like to emphasize, Mr. Chairman, that the reason for the relatively more relaxed interim standards, which have enabled 37 percent—it can't very well be a giveaway when 37 percent of those who applied under the interim standards were approved—that the reason for interim criteria was that there was a backlog of whole generations of people who had suffered from complete neglect in terms of programs to prevent black lung disease and in terms of the denial that black lung disease existed.

Chairman RANGEL. Thank you so much.

You know, we do not have jurisdictions over these eligibility standards, so you do not have to spend that much time rebutting. I suppose when anybody has a forum they like to speak. We are concerned about your position on tax structure, and you have made that abundantly clear in your statement, which will appear in the record.

[The prepared statement follows:]

STATEMENT OF PAUL SIEGEL, EXECUTIVE DIRECTOR, CHICAGO AREA BLACK LUNG ASSOCIATION

Mr. Chairman, we deeply appreciate the opportunity to testify before this Committee on the question of attaining solvency for the Black Lung Disability Trust Fund. I am Paul Siegel, Executive Director of the Chicago Area Black Lung Association and I am accompanied by Richard Ricono, our Chairman who is a former coal miner from Illinois. By way of brief introduction we will point out that C.A.B.L.A. is an organization of disabled miners and widows who have migrated from the coal fields to the Chicago area and which has assisted hundreds of black lung victims in their claims for benefits and which has educated our own members and the general public to what we see as the vital and pioneering example set by the Federal Black Lung Program in the field of occupational health and safety.

We have carefully read the press releases which we have received, describing the purpose of these hearings and they clearly imply to us a very admirable purpose—to address concretely the practical questions involved in putting the Black Lung Disability Trust Fund on a financially solvent basis. This further implies an affirmation of the legitimacy and validity of the Federal Black Lung Program and a recognition of the positive accomplishments brought about by the Federal Coal Mine Health and Safety Act, as amended.

In relation to the question of solvency we wish to state our enthusiastic support of the position taken by the National Black Lung Association and others that the Trust Fund be made solvent by seeing to it that the cost be borne by the industry which is responsible for maintaining the healthiest possible work environment. We favor doubling the tax on coal which supports the Fund and we favor raising the interest rate at which Responsible Operators will have to reimburse the Trust Fund for interim payments made by the Fund as a result of lengthy appeals by Responsible Operators in those cases where they, rather than the Fund, are individually liable.

We would note here that previous testimony before this Committee has indicated that raising the levy which supports the Fund would not adversely affect the production of coal. In relation to the future of the Trust Fund we would note the following:

1. The law provides that miners who last work after 1970 will not be paid from the Fund so that in years to come the number of claims won and paid out of the Trust Fund will obviously be heavily reduced.

2. A great number of those receiving benefits from the Fund (people who worked prior to 1970) are quite advanced in age so that payment to these older generations of disabled miners will clearly soon peak and then decline due to the obvious fact of the ever increasing mortality of this finite group of older people.

3. The very large expenditures for lump sum payments in the years immediately following the 1978 amendments (which involved many cases originally filed before the Trust Fund even existed) represent the backlog of old claims that will not exist in the future.

It would thus appear that the issue of the Black Lung Disability Trust Fund should not be a terribly explosive or controversial one or be seen as an insurmountable problem. We simply need to bolster the fund by raising the tax on coal and to stop encouraging (with low interest rates on reimbursement of the Fund) Responsible Operators to appeal virtually every individual case, and thus relieve some of the pressure of interim payments from the Fund. Then in the near future, new expenditures by the Fund will be dramatically and inevitably reduced for the reasons outlined above.

Unfortunately however, the current problems of the Fund (which in essence stem from years of neglect and injustice which resulted in whole generations of miners who unnecessarily sacrificed their health and received no compensation) appear to be seen in some quarters as an opportunity to attack those provisions of the program which correctly have sought to assure that those who still survive from among the victims of past neglect and coverup be able to receive some compensation while they are still here. Herein seems to lie the source of the controversy and the difficulty we find in taking the simple practical measures needed to assure solvency.

We must note here, that one of the agencies which testified on July 27, 1981, the GAO, devoted some 90 percent of its testimony not to practical questions of making the Fund solvent, but to an attack upon those provisions of the law which have made it possible for some 37 percent (this figure should put allegations of a "give-away" in perspective) of the backlog of older claimants to be approved by the Department of Labor under temporary interim standards, without lengthy litigation which itself involves considerable administrative costs, and which many of these older black lung victims would never live to see resolved.

We respectfully submit that at this time, when we hear so much about excessive administrative costs of government, we are distressed to see so much effort, including, we assume, the use of paid medical consultants, to attack medical standards, many of which will not apply to future claims and to rehash old controversies about which virtually every possible comment has already been made, filling volumes of testimony. Since it is almost universally agreed that benefits should not be taken away from those who have already received them under the interim standards, it seems to us incredibly wasteful to attack these standards in hearings devoted to the future solvency of the Fund.

Because we deeply respect the stated purpose of these hearings, which purpose is clearly not to write a new set of medical standards for the Black Lung Program, we will not spend time on a point by point refutation of statements made in opposition to provisions of the 1978 amendments in the name of "solvency of the Trust Fund". But we must state here our deep concern and our hope that this Committee will not allow the question of solvency of the Trust Fund to be used to attack the Federal Black Lung Program. We would refer those of you who are interested, to the appendix submitted with this statement. This appendix is simply a xerox copy of a previous statement made earlier this year, when the Administration was quoting the previous GAO study of SSA reviewed black lung claims, in which we addressed the question of, "how easy is it to get Black Lung Benefits?", based on our own experiences. These examples would only barely begin to show the other side of the Black Lung Benefits story.

In presenting the final part of our testimony we would like to paraphrase the Chairman of this Sub-Committee for whom we have great respect and who asked at the hearings of July 27, 1981 if increasing use of coal would mean increasing numbers of black lung claimants and ever increasing Benefits to be paid out.

This question really goes to the heart of the matter. There is very little doubt that with the proper measures, the incidence of pneumoconiosis could be greatly reduced for future generations. The penalty of industry financed compensation is one incentive for taking seriously what must be seen as the "other half" of the total commitment made by the U.S. Congress to deal with mine health and safety—prevention through provision of a maximally health work environment. The Black Lung Associations have always seen compensation as one part of a total program to make the suffering that necessitated compensation a thing of the past.

If the industry is now to be "let off the compensation hook", by making eligibility standards *even more restrictive than the already restrictive permanent standards*, then that would amount to a green light to increase coal productivity without great regard for eliminating black lung disease. It could be the first step towards once again seeing the problem of coal workers' respiratory disease as solved by denying its existence.

And what then? Another generation of coal miners would come to realize that its health has been sacrificed to the convenience and profits of industry and most assuredly society will sooner or later have to respond to the demands of a new backlog of neglected victims and their widows. We hope that such a vicious cycle is not about to ensue.

It would be far more productive to maintain a strong compensation program in conjunction with a strong program of prevention so that we might see in the future a great reduction in the disease which of course must bring with it a reduction in expenditures on future compensation. This would be a wonderful thing and we would note here that a study in the costs in human resources—lawyers' and doctors' services purchased by coal operators to contest black lung claims—might reveal that the channelling of such resources into other purposes could help solve many social problems. In relation to that immense expenditure of resources, the initiation of the Black Lung Disability Trust fund, to assure payment to the older victims without all that litigation, was a progressive measure.

We sincerely hope that this Committee will uphold that progressive measure by recommending the necessary actions to get industry to support the Fund and that it will not allow the practical financial questions surrounding the Fund to weaken a program which represents not only compensation for victims but hope for future generations.

APPENDIX

Just how easy is it to get black lung benefits?

The following cases, in which the names are eliminated to protect confidentiality are from the files of the Chicago Area Black Lung Association:

I. Miner "A"—Miner "A" worked 30 years in the coal mines of West Virginia. He moved to the Uptown neighborhood of Chicago in 1968, where he got a job in a factory. He filed for Black Lung Benefits in 1970. He did not receive a hearing in his claim, which was denied at the initial and reconsideration levels by the Social Security Administration, until 1975. He went to his hearing unrepresented and was denied despite—X-ray evidence of black lung disease; despite the fact that he had been hospitalized for respiratory insufficiency and despite the fact of his ever increasing respiratory problems. The reason for the denial was that the Administrative Law Judge—relied upon a re-reading of the X-ray by a government paid radiologist as negative & made a finding that the claimant's work in a factory (which he was forced to do to survive) was as strenuous as coal mining and proved he was not disabled. Miner "A" died in 1977 believing that a lawyer he had traveled to West Virginia to hire was appealing his claim.

Efforts by CABLA on behalf of the widow revealed—

(A) That the autopsy showed not only pneumoconiosis but related heart failure which an independent medical expert verified certainly was a severe enough problem to be disabling.

(B) That the lawyer in W. Virginia had never appealed the case so it was closed.

(C) That the finding that his factory work was of comparable difficulty to the work in the mines was completely false.

In 1980, three years after his death and ten years after he applied for benefits, miner "A"'s widow received black lung benefits.

One of the provisions of the 1978 amendments binds the DOL or SSA to accept the positive reading of a qualified radiologist. This would have made it possible for miner "A" to win his claim before he died and to stop working, which continued working may have hastened his death at age 61 years. The Reagan administration will possibly attack the provision binding DOL to accept to positive reading by a qualified radiologist.

II. Miner "B"—worked over 15 years in the mines of Pennsylvania, applied for Black Lung Benefits in 1972. His family doctor verified that he had suffered severe shortness of breath for many years. His X-rays were (like Miner "A"'s, read negative by government paid "experts". His extremely poor health left him incapable of completing the pulmonary function test. His claim was pending when he died in 1975 at age 56 years. His widow turned in an autopsy report but due to it being sent to the wrong place by the SSA office it was not considered and the claim was denied. She visited a lawyer in Chicago who advised her to give up because the autopsy did not say "black lung" on it.

She came to CABLA with the case closed and investigation by CABLA revealed,

That the autopsy in fact showed evidence of severe black lung and related emphysema, which an independent medical expert verified was certainly disabling to the miner. CABLA successfully took action to re-open the claim. The widow received benefits in 1977, 5 years after the miner had applied and two years after his death. The miner had resided in Oak Park; Illinois.

III. Miner "C"—worked 12 years in the coal mines of West Virginia under extremely dusty conditions. Miner "C" moved to the Uptown neighborhood of Chicago in 1959. He suffered for years from ever worsening shortness of breath and from the extremely poor medical care which poor and disabled people in Uptown have had to contend with. When CABLA made contact with him, through a phone call from a concerned neighbor, we found a 56 year old man who was virtually bedridden from extreme shortness of breath and severe coughing fits. He was living on the last of his unemployment benefits and had not seen any doctors for many years. He was unaware that he could file for black lung benefits, thinking you had to still reside in the coal fields. We got a claim filed and when we went to visit him to arrange a doctor's appointment in July, 1976 we found his maggot infested corpse which had been there for several days. The autopsy showed, anthracosis, nodular fibrosis (black lung disease), chronic bronchitis, chronic heart failure caused by long term lung disease, bronchpneumonia, emphysema and cancer of the lung. His lung disease had literally suffocated him to death and he had received absolutely no medical care. There are untold thousands like him who died and no statistics ever revealed even their lung problem let alone that they had worked in the coal mines. He never received black lung benefits.

His widow received them in 1979.

The kind of standards which the Reagan administration will propose, will not only make it impossible for miners like these to get benefits while still alive—benefits which they desperately need and which represent their only chance to get medical care to ease their suffering. The standards may actually be so restrictive as to prevent the widows from being compensated even when the autopsy shows pneumoconiosis—because one can always theorize about which of the many health problems many of these people suffer from are causing the most disability.

Chairman RANGEL. Who is next?

STATEMENT OF BILL BAILEY, PRESIDENT, WEST VIRGINIA BLACK LUNG ASSOCIATION

Mr. BAILEY. I will follow him, sir, Bill Bailey from West Virginia. I would like to read or maybe comment, because I am an affected miner.

I have known it. I have become disabled from it. From that, I will attack the Reagan administration because of this. I have heard testimony from those who came before us that the medical process is one that they are attacking.

We are not here for that. You called us here to find solvency within the structure of the money problem. The written plan to make budget cuts in the black lung disability trust fund and seek eligibility restriction on further black lung claims proposals are based on the false assumptions that the eligibility criteria are responsible for the financial problems of the fund.

Nothing could be further from the truth. The trust fund is insolvent for three basic reasons:

A huge backlog of claims finally processed after, we might say—and I will gladly brag a little bit here because the Black Lung Association throughout the United States got together and we held up these claims because we felt justice wasn't being done to the individual miner and his family.

So, we held those claims up for adjudication to go back and review them. When they did a lump sum was turned loose in 1979, which will never be or hadn't been before and will not be in the future as a volume that came out in this back—they have all wanted to grab this one issue and say, look here, what is going to happen in the future. It is going to cost us. It is going to be a terrible thing, energy or the coal operators and all of this.

Not so, because of one volume that came out in 1979 was because we held it and had them to review this, resulting in unnecessary buying and borrowing and spending by the trust fund and provisions of the act that required the trust fund to borrow at prevailing interest rates, but allowed the coal operators to be paid the trust fund was 6 percent interest.

Anybody, and especially one with an eighth grade education, can figure this out without going to machines for the answer. If you are going to—if my wife is going to draw out on our checking account over what I am putting in there, somebody is in trouble. That is me.

If they are going to charge the operators the responsibility of paying out 6 percent where they borrow money at 17 or 19, as it is today, anybody can see where the fault might lie.

So, collect what hasn't been collected, as they promised us they were going to oversee, and in this bank account that they were paying into they said that they would collect from the operators on a tonnage rate of coal.

I doubt that very much, that they have even brought in a portion of what has been owed to the trust fund. If they had, it would be solvent right now. In the future, it can be if we make them pay that, that is responsible for going there.

One of Reagan's major concerns about the trust fund is the large increase in benefit payments that occurred in 1979. Reagan's economic advisers obviously view 1979 as a typical year, or expect future years to be just as costly.

I will just say it is a lie. The Black Lung Act of 1977 required a review of all those previously denied claims. This is where it came for the calendar year of 1979. 62,444 claims were approved, 30,667 of which were originally filed before 1973.

These claims involved large, one-lump sums. This is where the indebtedness came from.

I am going to yield back to Paul Siegel, if I have a little bit more time left.

Chairman Rangel. Paul Siegel? OK.

Mr. Siegel. Yes.

Chairman Rangel. Do you have anything you would like to say further?

Mr. Siegel. Well, we would just like to stress that we think that this committee has raised the question of how can we prevent the disease in the future. We think that if we are to let industry off the hook in terms of compensation, that we would not be encouraging the prevention of the disease in the future, and when we look at some of the questions that have been raised about widows, for instance, the only provision that says anybody could ever get benefits without medical evidence is in a widow's case where there is no medical evidence at all available, period.

We would suggest that keeping that measure in the statute would be a very good motivation to industry to do the kind of screening that you were talking about so that nobody will die and leave behind a widow who has her own memories that her husband couldn't breathe but has no medical evidence available.

The permanent standards which are now in effect, in fact, are very restrictive. It just seems that the solvency of the trust fund is really such a simple and practical question, if we could address that without attacking a program which not only offers compensation to the victims of past neglect, but which by helping to give industry some financial incentive to clean up offers some hope for the future.

Chairman **Rangel**. Thank you.

Who will be testifying next?

STATEMENT OF WILLIE ANDERSON, LOGAN COUNTY BLACK LUNG ASSOCIATION

Mr. **Anderson**. I will. My name is Willie Anderson. I am a disabled miner. For about the last 7 years I have represented miners as a lay representative in the claims process.

Chairman **Rangel**. Which association are you with, Mr. Anderson?

Mr. **Anderson**. With the Logan County Black Lung Association of West Virginia.

I won't be repetitious because most of the people here on the panel with me have said a lot of the things I wanted to say, but on behalf of my association, our position is the mounting debts of the black lung trust fund, the last estimated at about $965 million, is one reason the program has been targeted for reform.

Since it is labeled a program by the Independent Coal Operators Association, it has tended to prejudice the American public against fair and equitable compensation for disabled miners.

We, the National Black Lung Association and West Virginia Black Lung Association, totally oppose any attempt to wipe out congressional mandated presumptions now used to determine whether a miner receives black lung payments.

There is no automatic entitlements in the act that requires a miner be paid benefits based on tenure alone. The pension program concept is a red herring. The black lung program has been characterized by both humanitarian feeling and bitter controversy.

At issue is who is going to bear the social cost of the disease of mining coal and in what form and in what amount. We, the black lung associations, national as well as State, are pleased that the National Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977 did significantly—the Federal Mine Health and Safety Act.

The 1977 amendments did establish the black lung disability fund. It amended the standards for determining eligibility for benefits. It eliminated certain restrictions on the filing of claims. It establishes penalties that would be imposed if a coal mine operator fails to meet its obligation. It makes technical corrective and administrative procedural and substantive changes.

The Department of Labor, the Congress of the United States listened intently to black lung claim maintenance groups such as this. It has responded with many relevant and substantive comments.

The claims controversial process is at work now for the coal operators. They are using it, and as previous testimony indicated, in some cases they are successfully converting from this morning's testimony 78 percent of the claims in some areas.

The fund could become solvent if some past delinquencies and inequities are cleared up. Too many benefits is not the problem. Too little money is the problem.

Thank you, sir.

Chairman **Rangel**. Thank you, Mr. Anderson.

[The prepared statement follows:]

STATEMENT OF WILLIE ANDERSON, LOGAN COUNTY BLACK LUNG ASSOCIATION

The problem relating to the insolvency of the black lung trust fund is a major one considering that the entire program can be destroyed by simply allowing the trusts fund to become bankrupt. The trust fund is literally the financial lifeline of thousands of disabled coal miners, their widows and families. Therefore, the problem before us is a grave one.

There are coal companies that never re-pay the trust fund which is forced to put claimants on "interim pay" because the coal companies refuse to accept liability on any claim. Now, the Black Lung Benefits Reform Act of 1977 provides mechanism for collecting both the tax on coal and reparation to the trust fund. However, the mechanism isn't working. Clearly, it isn't working because we are here today.

We are in complete opposition to any weakening of the Black Lung bill. Any industry which causes an occupational disease, including the coal industry, should be morally and financially liable for the loss of human life.

Too many benefits is not this problem here today: Too little money is the problem. Increasing tax on coal and making responsible operators pay the trust fund back at the going interest rate is a step toward a proper solution.

Chairman **Rangel**. Who's testifying next?

STATEMENT OF BILL BOWMAN, CHAIRPERSON, VIRGINIA BLACK LUNG ASSOCIATION

Mr. **Bowman**. My name is Bill Bowman, I am a member of the National Black Lung Association and also the Virginia Black Lung Association.

For the past 10 years, I have been doing work with the claims. I agree with the position that's been set forth by the National Black Lung Association regarding the solvency of the black lung trust fund.

That is, I agree that the trust fund should be strengthened monetarily rather than the guidelines, medical and procedural, of the Department of Labor's regulations be strengthened.

Moreover, it would do the Department of Labor and the administration well to take a look at the manner in which the Department of Labor spends its money.

For instance, it would be interesting to know whether only money that goes into the trust fund is taken out for benefits. That is, we would like to know that all of the other expenses of the Department of Labor, for instance, the administrative law judges, the paying of medical examinations, and other bureaucratic working come directly from the Department of Labor's pocket.

Chairman **Rangel**. Hold it just a minute. I can't understand you.

OK. Very good. We can follow it. It was hard hearing you. If you will speak more slowly and directly into the mike, it would be a lot easier for us up here.

Mr. **Bowman**. All right. It is not enough to simply improve the financial situation of the black lung trust fund. That must also be accompanied by the Department of Labor itself attempting to use less money.

For example, each time an administrative law judge comes to Virginia, West Virginia, Kentucky, or wherever, they must stay a week, bring a stenographer, and room at hotels and motels which are quite expensive.

It might be possible to decentralize some of those kinds of expenses.

Further, when the Department of Labor puts a claimant on interim pay and the responsible operator ultimately loses the claim, he begins to pay monthly benefits to the claimant.

My question is, Does the responsible operator always immediately reimburse the trust fund at a rate of 6 percent or is that reimbursement allowed to lapse for several more months creating a doubly disastrous financial situation?

That is, the responsible operator has only to reimburse the trust fund at 6 percent interest, whereas the trust fund must borrow the money at the current interest rate.

If a period of time is allowed to elapse between when the responsible operator is found ultimately liable for the claim and he reimburses the trust fund, he is once again in an economic position of being much shrewder by waiting to reimburse the trust fund.

Claimants know when the responsible operator begins making direct payments to them, but neither the claimant nor his representative is ever apprised as to whether the responsible operator has, in fact, reimbursed the trust fund.

Finally, it is my position that in order to secure the solvency of the black lung trust fund, the fund itself must be strengthened.

That means raising the tonnage rate on coal operators and also raising the interest rate at which they are liable to the trust fund to the same proportion as the interest rate at which the trust fund must borrow.

Coupled with that, it is necessary that the Department of Labor take a look at some of their own expensive procedures. Since the Department of Labor has been paying for medical examinations which include X-rays, blood gas studies, and pulmonary function studies as well as physical examinations, the doctors have uniformly raised their prices.

This contributes, not only to a problem for the Department of Labor, but also problems for any coal miner who may wish to secure a medical examination himself. These examinations are unrealistically expensive. The Department of Labor has contributed partially to that problem.

While it would be feasible today to answer the questions I have posited above, it would be to the benefit of the administration and Department of Labor if they looked to the Department of Labor's expense as well as the possible insolvency of the black lung trust fund as a tariff problem, rather than as one individual problem.

If reasonable economic measures were taken in both instances, the claimant would be benefited to a large degree because it would no longer be economically intelligent for the responsible operator to withhold payments to the trust fund and it would be economically in the interest of the Department of Labor to attempt to streamline their own bureaucracy.

Thank you for this opportunity to testify before this committee. If there are any further questions, my address is: Bill Bowman, 202 Center Street, Richlands, Va.

Also, we would like to add from previous comments today in reference to the—I think it was UMWA statement that NIOSH should control the X-ray.

The operators, for instance, they have control of the X-rays that is required by law of the working miner. The X-ray is taken, then it is sent to Morgantown, W. Va.

The miner, when he only has 5 or 6 years' coal mining experience, and X-ray is interpreted as positive, Morgantown comes back and notifies the operator that the miner has dust. They don't tell the miner that he has the dust; they don't tell the foreman or supervisor.

They sort of blackball him. If he is 10 minutes late or something for work, they use that as a lever. Anything they can use to get rid of him, they do.

We feel NIOSH should control the X-rays and notify the miner along with the operator and other interested personnel.

Also, I have been involved in representing thousands of claimants, and under the presumption, there is none I have known that is not medically documented to trigger the presumption of 10-year presumption or 15-year presumption of coal-mining work and not medical entitlement. All claims I have been involved with were medically documented.

Thank you.

Chairman RANGEL. The Chair can't recognize the picture on that button you are wearing.

Mr. BOWMAN. Sir?

Chairman RANGEL. The picture. You are wearing a button with a photograph on it. The Chair finds it difficult to recognize who it is.

Mr. BOWMAN. It reads "Kennedy for President in 1984."

Chairman RANGEL. Who's next? Well, I want to thank the entire—is there any more testimony?

I want to thank the entire panel for your presentation, and Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. I want to thank the panel and for your taking your time to come and visit with us today.

I have no particular question, other than, does it bother any of you to know that some people might be receiving or do receive benefits that they may not be entitled to; that they are drawing from the fund which was set up for you who are disabled?

Have you done anything to try to seek out those kind of people that are actually not deserving of black lung benefits?

Mr. ANDERSON. Sir, let me answer that question, and simply because I represent claimants. I have done it since 1972. I am still in that process.

As a representative of miners—being a miner myself, having worked almost 20 years in the mine before I was disabled and came out, the very first thing we do in having a thorough comprehensive knowledge of the act and the medical criteria, whenever a miner, in developing a claim for a miner, when we find that a miner does not have the criteria that is necessary, that would be legal criteria as well as medical, we do not develop the claim.

We try at the level of a miner on his own initiative by going to Social Security or Department of Labor, whichever comes first, but when he comes to us after being denied in any of those stages, I think we do that.

I think we do it because we want people that are qualified by medical criteria. That when we weren't satisfied with the criteria, we came here to try to change it.

It was liberalized here in the Congress of the United States. Now, I think one of the outstanding things you will notice is where you use rebuttal presumptions—irrebuttable as well as rebuttables.

Now, there are some areas where I have to go back 25 years to possibly get evidence together that simply does not exist—and from a miner that I wouldn't ever see because maybe the man's been dead 20 years.

So only in a case where we use that kind of evidence is the only way. But when we are looking at a miner, he can go through the examination process.

We try very hard to see that people deserve it, get it, and those who do not deserve it, do not get it.

Mr. **Siegel**. I would like to add, there is an appendix to our testimony from Chicago which adds a few case examples.

Prior to the broadened and liberalized measures in the 1978 amendments, we were finding that many people were being denied claims who subsequently were proved to have really significant occupationally related pneumoconiosis.

Every one of the changes of the 1978 amendments was directed to real abuses that were preventing people from getting them. There are so many obstacles for the older generations of miners, you know, and every single one of those points of the statute addresses those obstacles.

I do think we need to bear in mind that there are two different sets of standards, interim and permanent.

Mr. **Duncan**. Thank you. I want to commend you for the way you present your claims and represent your people. I also represent and have represented hundreds of claimants in my work, also, as a Congressman, who represents counties that have many black lung recipients.

And I will also say that I have always supported every piece of legislation that would benefit black lung beneficiaries, and also the claimants. I would, if I may, state to Mr. Bailey, who seemed to imply that the problem of lack of funds is because of the Reagan administration. May I just tell you that the funding policies, the loans and interborrowing of the funds, and the other problems that have been raised, were all under prior administrations.

And there are new problems coming up now. I think we must work these things out on a bipartisan basis. If we become adversarial, then I think you may have more problems than you think. I think we have to do it on a friendly basis.

I want to pledge to you my continued efforts to do that. But I think that we can't, I won't use the word "demagog," but we can't say that all these problems have come up in the last 60 or 90 days.

I know the chairman is approaching this in such a manner that we can work it out, and we want that strongly.

I don't want any of my beneficiaries to suffer. I want the fund to be strong. I don't want it to become another social security fund where working people pay their money into the social security fund, and then, for example, almost 800,000 ex-Federal workers are drawing out of the social security fund today after they only paid in a few dollars, just long enough to get qualified, and use up the funds that workers paid in for their own purposes. That is not right, and it's wrong.

But I think we can work this out. I think we must approach it in that vein. I want to help it. I want to thank you for being here. You can communicate with me any time on these matters.

Thank you.

Chairman **Rangel**. I want to join with Mr. Duncan. It is unfair to attack the Reagan administration's policies since they have been unable or unwilling to share those policies with Members of the U.S. Congress.

So with that bipartisan effort, maybe we can try to get some member of the administration to come down here at some time to find out how they would like to resolve this very serious problem that the trust fund is facing.

Mr. **Siegel**. I would just like to mention that if we could get a clear statement of the Reagan administration's intentions and what it is they want to do, we might have the basis for some kind of dialog.

We came here for the purpose of trying to support this committee in taking the practical measures to make the trust fund solvent.

I hope that that is understood.

Chairman **Rangel**. Well, watch television. That is where we get most of our major policies from the administration.

Yes, sir?

Mr. **Bailey**. Just my own feelings, I work for United States Steel Corp. They had policies set up within the corporation itself that had to be broken for the life of a miner that worked in their industry.

These policies were broken. And I think that, with the United States Steel, I am talking about. And I think that Reagan's policies can be broken, because if we are going to be jeopardized for the lives of people in order to save him a dollar here or somewhere else, then I think we should attack the Reagan administration. That is why——

Chairman **Rangel**. We don't know what those policies are going to be, you see. We have seen the speech on television but we don't have any witnesses to clarify what it means to the trust fund. We will see.

Thank you so much.

The business panel will be testifying next, National Association of Manufacturers, Russell Guy. He will have Daniel Vannoy with him. Is he here? Very good.

From American Mining Congress, John Conlon, vice president of public affairs.

American Iron and Steel Institute, John Stenmark, vice president. He will have James Strader with him; general attorney. And Dwight Keating, vice president of Grafton Coal Co. will be here testifying for the Mining Reclamation Council of America.

They will testify in the order announced by the Chair, and as I pointed out, the amber light indicates 1 minute left before the red light, which means the time has expired.

So we will hear from Mr. Guy.

STATEMENT OF RUSSELL GUY, ASSISTANT MANAGER, SAFETY AND WORKERS' COMPENSATION, BETHLEHEM STEEL CORP., ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. GUY. My name is Russell Guy, assistant manager, safety and workers' compensation for Bethlehem Steel Corp.

I am appearing today as a member of the National Association of Manufacturers' Workers' Compensation Subcommittee.

Accompanying me is Daniel W. Vannoy, associate director, Product Liability and Employee Compensation Systems for NAM.

In order to reserve time, the panel has coordinated the concerns of the coal industry and will individually and collectively address the problems confronting the black lung disability fund.

The members of NAM employ approximately 75 percent of all workers in the manufacturing sector. As such, we are vitally interested in industrial workers receiving adequate compensation in a prompt manner if they are disabled as a result of injuries in the workplace or diseases caused by workplace exposures.

NAM believes that benefit and eligibility standards can best be tailored to fit socio-economic conditions at the State level. Therefore, WC, including black lung and other occuptional disease programs, should be developed by the States without Federal intervention.

NAM believes that WC disability programs should be a direct and complete charge on industry. The black lung disability trust fund, as a funding mechanism for a work-related disability program, should be self-sustaining, self-funding, and financed by industry.

NAM urges this Subcommittee on Oversight to adhere to principles of fairness when balancing the need for expediency in restoring solvency to the black lung disability trust fund. NAM strongly believes that an increase in tax would be fair to employers only if that tax is accompanied by substantive statutory reforms.

The WC Subcommittee of the NAM respectfully requests that the 97th Congress consider reform provisions similar to those included in H.R. 4387 as essential in restoring the financial integrity of the black lung program.

At the inception of the black lung program, it was intended as a temporary Federal one-shot compensation deal to compensate coal mine victims of disabling complicated pneumoconiosis.

However, that original intent has been constantly distorted by the losing of eligibility standards.

First, certain presumptions were established to assist claimants in establishing benefit eligibility.

I won't go into those part B and part C presumptions. I know you have heard them several times this morning.

The original intent, however, underlying title IV was distorted by the several amendments to the act, the last which occurred in 1978.

Again, you are familiar with these. You have heard them all this morning. Let me summarize our recommendations for you.

NAM believes that a combination statutory reform and coal tax proposal would restore solvency to the black lung disability trust fund, and aid in insuring that employer-financed State worker compensation programs are the exclusive legal system for dealing with the physical and economic problems arising out of occupationally connected disabilities.

NAM recommends that Congress enact legislative provisions to fulfill the promise of the sponsors of the original law by shifting future black lung claims to State workers compensation programs.

NAM specifically recommends: Eliminating all statutory presumptions; redefining "coal miners' pneumoconiosis" to eliminate coverage of unrelated nonoccupational diseases; requiring a claimant be required to present medical proof of disability or death due to pneumoconiosis in order to receive black lung benefits; eliminating automatic survivors' benefits; eliminating the use of an affidavit as evidence of black lung when not collaborated by other sufficient medical evidence; eliminating restrictions on the rereading of X-ray evidence; requiring that all judicial proceedings regarding a claim be exhausted before back benefits are made payable; and giving the black lung trust fund the authority to contest claims for which it could be liable.

Mr. Chairman, Mr. Duncan, the NAM concludes its testimony by respectfully requesting that you restore the solvency of the trust fund by enacting similar reforms as contained in H.R. 4387.

The other members of the panel will now address the problems.

Thank you for the opportunity to present the concerns and attitudes of our membership on the problems which have resulted from continued intervention into a program which we feel is adequately covered by State workers' compensation systems.

Thank you.

[The prepared statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Russell Guy, Assistant Manager, Safety and Workers' Compensation for Bethlehem Steel Corporation. I am appearing today as a member of the National Association of Manufacturers' Workers' Compensation Subcommittee and its Black Lung Task Force. Accompanying me is Daniel W. Vannoy, Associate Director, Product Liability and Employee Compensation Systems for NAM.

The National Association of Manufacturers represents approximately 12,000 member companies, 80 percent of which are considered small businesses. The NAM also has an affiliation with an additional 158,000 businesses through its Associations Department and the National Industrial Council.

The members of NAM employ approximately 75 percent of all workers in the manufacturing sector. As such, we are vitally interested in industrial workers receiving adequate compensation in a prompt manner if they are disabled as a result of injuries in the work place or diseases caused by work place exposures. NAM's policy on workers' compensation (see Addendum) expressed the beliefs that:

"Workers' compensation programs should continue to be developed through legislation by the states, rather than the federal government. At the state levels, the benefits can best be tailored to fit local socio-economic conditions and such situations as may arise as the result of the introduction of new industries and technologies. Therefore, workers' compensation should continue to be regulated and administered by the states without intervention by the federal government."

"State workers' compensation should provide specified benefits related to earnings of those who have suffered a wage loss because of all injuries or diseases arising out of and in the course of employment, as well as prompt and full medical care."

Although it is our belief that workers who become disabled as a result of work place injuries/illnesses deserve adequate medical care and compensation for lost wages, NAM is extremely concerned over the proliferation of programs providing workers' compensation benefits for injuries and/or illnesses not related to the job. As NAM's policy states:

"Since state workers' compensation is a direct and complete charge on industry, it should not be extended to provide benefits for non-occupational disabilities or diseases or for conditions resulting from the normal aging processes."

NAM believes that just as any other work-related disabling illness, "coal miners' pheumoconiosis"—Black Lung—should be compensated as an occupational disease under state Workers' Compensation systems. WC disability programs should be employer financed and "a direct and complete charge on industry." The Black Lung Disability Trust Fund, as a funding mechanism for a work related disability program, should be self-sustaining, self-funding and financed by industry.

NAM urges this Subcommittee on Oversight to adhere to principles of fairness when balancing the need from expediency with restoring solvency to the Black Lung Disability Trust Fund. NAM strongly believes that an increase in the tax would be fair to coal operators only if that tax is accompanied by substantive reform provisions. The Workers Compensation Subcommittee of the NAM requests that the 97th Congress consider reform provisions similar to those included in the "Black Lung Amendments Act of 1981,"H.R. 4387 (Erlenborn, R-IL) as essential in restoring financial integrity to the Black Lung Program.

I. HISTORY OF THE BLACK LUNG PROGRAM

In 1969, the Federal Black Lung Benefits program was enacted as Title IV of the Federal Coal Mine Health and Safety Act of 1969 (FCMHSA), 30 U.S. C. 801 et seq. The need for federal legislation at that time is demonstrated by the fact that in 1968, the workers' compensation programs of only three states provided coverage for "coal miners pneumoconiosis." Today, all 50 states provide coverage for black lung as an occupational disease.

At its inception, the Black Lung program was intended as a temporary federal one-shot compensation deal to compensate coal mine victims of disabling complicated pneumoconiosis. The legislative history of the Federal Black Lung program—Title IV of FCMHSA, the Black Lung Benefits Act of 1972 (BLBA), the Black Lung Benefits Act of 1977 and the Black Lung Revenue Act of 1977—shows a continued loosening of eligibility standards. NAM believes that these loose, broad-based standards have caused the Black Lung Disability Trust Fund to remain financially insolvent since its creation in 1978.

A. *FCMHSA—Title IV*

Title IV of FCMHSA provided benefits to totally disabled miners (NOTE: partial coverage was not provided) and eligible family members of deceased miners who died from black lung. Congressional intent was to initially pay benefits from federal revenues and ultimately shift liability for benefits to responsible coal operators with administration of the program eventually shifting to the states.

Title IV established a two-part program for benefit payments to eligible miners. The first—"Part B" which was administered by the Social Security Administration—provided for the "federal government's responsibility" for the backlog of claims from miners and their widows. Part B was designed to provide for the filing of claims from December 30, 1969 to July 31, 1973 (NOTE: Black Lung Benefits Act of 1972, 30 U.S.C. 922, extended the period 18 months from 12/31/71).

The second part, "Part C," provided for "responsible operator liability." Under Part C, a coal operator could only be liable if the miner was disabled and then died at least in part due to employment in the mine operated by such operator.

Administration of Part C was delegated to the Secretary of Labor who was authorized to resolve claims and to assess liability against the appropriate coal mine operator commencing July 1, 1973 (Note: BLBA extended period six months from January 1, 1973).

Title IV also established certain presumptions which serve to assist claimants in establishing benefit eligibility; they include:

Title IV, Part B and C Presumptions

If a miner with 10 or more years of underground coal mining employment suffered from pneumoconiosis, there is a rebuttable presumption that the disease arose out of such employment.

If a deceased miner was employed in underground coal mining for 10 or more years and died from a respirable disease, there is a rebuttable presumption that the death was due to pneumoconiosis.

If a miner suffered from a chronic disease of the lungs which is diagnosed as complicated pneumoconiosis, there is an irrebuttable presumption of total disability or death due to pneumoconiosis.

Benefits under Part B and C were set at the rate of 50 percent of the payment to a totally disabled GS 2 federal employee augmented by 50 percent for one dependent, 75 percent for two dependents, 100 percent for three or more dependents. The monthly benefits are escalated October of each year for new claimants when the federal salaries are adjusted.

Black Lung Benefits Act of 1972

Title IV was amended by the Black Lung Benefits Act in 1972 to extend coverage to additional classes of workers not previously entitled to black lung benefits. As amended, the law: Included surface coal operators; provided for widow benefits without regard to cause for death if the miner was totally disabled by pneumoconiosis at the time of death; redefined "total disability" to include the concept of comparable employment—employment requiring skills and abilities comparable to those employed in the mines in which the claimant previously engaged; added a new fourth presumption of total disability and/or death due to black lung: If an X-ray fails to support a claim of black lung, but other relevant evidence demonstrates the existence of other pulmonary/respiratory impairment, there is a rebuttable presumption of total disability and/or death due to black lung if the miner had at least 15 years coal mine employment prior to June 30, 1971; and added benefits for medical treatment.

(C) Black Lung Benefits Reform Act of 1977 (effective March 1, 1978 and Black Lung Revenue Act of 1978 (effective April 1, 1977), PL 95-239, 30 U.S.C. 801.

Once again, the original intent underlying Title IV of FCMHSA was distorted by further liberalization with the enactment of the statute. These amendments included: Introduction of the disability trust fund financed by the imposition of a federal tax (50 cents/ton for underground coal; 25 cents/ton for surface coal; tax not to exceed 2 percent of producer's sales price) upon coal operator for each ton mined. The purpose of the tax is to: pay benefits without challenge for eligible miners and dependents if coal mine employment took place prior to January 1, 1970; pay claims in the event no individual operator liability could be established; pay claims that are not timely paid by coal operators; and pay for the administration of the federal black lung program; "coal workers' pneumoconiosis" redefined to include the "sequela" of black lung; "miner" redefined to include persons working in or around a coal mine or coal preparation facility, in coal mine construction or coal transportation under certain circumstances; authorization of the Secretary of Labor to establish new standards—i.e., medical evidence, procedures for establishing medical proof of total disability or proof in death claims—for newly filed Part C claims (NOTE: see 20 C.F.R. §721.1 et. seq. for "interim criteria"); presumption that any miner who was employed for 25 years in coal mines prior to June 30, 1971 and died before March 1, 1978 died of black lung, thereby entitling eligible survivors to benefit payments unless it is established that at the time of death such miner was NOT partially or totally disabled due to pneumoconiosis; requirement that pending and denied claims under Parts B and C be reviewed under the Department of Labor's more liberal "interim standards": placed responsible operator liability on last employer if miner terminated employment after January 1, 1970; federal government liability for all claims where miner terminated prior to January 2, 1970; elimination of statute of limitations for death claims; and modification of the statute of limitations for disability claims to commence within three years after medical determination of total disability.

II. SUMMARY OF NAM RECOMMENDATIONS

The National Association of Manufacturers believes that a combination substantive statutory reform and coal tax increase proposal would restore solvency to the Black Lung Disability Trust Fund and aid in insuring that employer-financed state workers' compensation programs are the exclusive legal system for dealing with the physical and economic problems arising out of occupationally-connected disabilities.

In addition to turning responsibility for the black lung program over to state workers' compensation programs, NAM urges the 97th Congress to enact legislation to insure that the Black Lung Disability Trust Fund is brought to a solvent posture by immediately placing the federal black lung program on the same basis as state workers' compensation statutes. NAM recommends: Eliminating all statutory presumptions; redefining "coal miners' pneumoconiosis" to eliminate coverage of unrelated non-occupational diseases; redefining "miner" to include only those workers involved in the extraction of coal; requiring a claimant to present medical proof of disability or death due to pneumoconiosis in order to receive BL benefits; eliminating automatic survivors' benefits; eliminating the use of an affidavit as evidence of BL when not corroborated by other sufficient medical evidence; eliminating restrictions on the re-reading of X-ray evidence; requiring that all judicial proceedings regarding a claim be exhausted before benefits are made payable; and giving the Black Lung Disability Trust Fund the authority to contest claims for which it could be liable.

III. STATE WC AS THE MOST APPROPRIATE SYSTEM TO COMPENSATE OCCUPATIONALLY-DISEASED WORKERS

NAM endorses the provision of H.R. 4387 that would terminate the Part C Federal program on February 28, 1983 and provide that, thereafter, coal miners' claims would be filed under state WC and processed according to state laws.

At the inception of the Black Lung Benefit Program, it was intended as a temporary supposedly one-shot compensation deal to compensate coal mine victims of disabling complicated pneumoconiosis until such miners were covered by state WC laws. NAM recommends that Congress enact legislative provisions to fulfill the promise of the sponsors of the original law by shifting future black lung claims to State workers' compensation programs.

Opponents of H.R. 4387 suggest that current law already allows for the turning of the black lung program over to the states if their workers' compensation programs meet certain federal minimum standards. NAM believes that adoption of such federal standards would threaten the survival of the WC system as state administered and designed programs.

Black lung as a WC program

An examination of the legislative history of the Federal Black Lung Program reveals a continued loosening of eligibility standards. The program as amended goes beyond traditional Workers' Compensation concepts of: Providing compensation to partially replace wages lost as a result of disabilities due to injuries/illnesses arising out of and in the course of employment; and providing prompt and full medical care relating to such disabling injuries/illnesses.

NAM is of the opinion that the current Program is more akin to an income maintenance/supplemental pension program than a work-related disability program.

NAM believes it is the continuing liberalization of eligibility standards that have caused the Black Lung Disability Trust Fund to remain financially insolvent since its creation in 1978. If it is the intent of Congress to provide all coal miners and their survivors with an income maintenance/pension program, then this intent should be clearly stated and not masqueraded as workers' compensation.

IV. NAM RECOMMENDATIONS:

(A) Elimination of statutory presumptions

NAM recommends the elimination of all statutory presumptions of disabling black lung. When enacted, such presumptions have been justified because of the difficulty in obtaining medical evidence of the existence of disabling black lung. However, the ability of medical tests to accurately identify black lung and its disabling effects have been greatly improved since 1969. The General Accounting Office (GAO) testified before this subcommittee on July 27, 1981 that, based on their discussions with pulmonary and respiratory specialists, "black lung can be diagnosed and disability determined with a high degree of accuracy and reliability." The opinion of several other medical experts support GAO's conclusion that working in mine for a specific period of time does not necessarily indicate that a worker has black lung.

(B) Redefine coal miners' pneumoconiosis

NAM endorses redefining "pneumoconiosis" as proposed in § 102 (a) of H.R. 4387. As originally intended, the proposed definition eliminates coverage of unrelated non-occupational lung diseases. NAM cites the current definition as an example of the all-encompassing conditions which can serve as the bases for receiving benefits under the Act.

The 1978 inclusion of Black Lung's "sequela" has justified DOL awarding benefits to miners with: Several diseases which have no causal connection to coal mine exposure, e.g., lung cancer and anthracosis, a condition which has no disabling effect; and asthma and other respiratory conditions which may be aggravated, but not usually caused by coal mine employment.

In fact, GAO found that miners are being awarded benefits for some respiratory conditions, such as asthma and bronchitis, which normally do not cause permanent lung damage and are caused by workplace exposures.

(C) Redefine "miner"

NAM endorses redefining "miner" as proposed in § 102(b) of H.R. 4387. By revising this definition, the program would move closer to the original intent of providing disability compensation only to those workers involved in the extraction of coal. The current definition allows for the awarding of benefits to workers in job functions that do not even suggest an increased likelihood of developing CWP; for example, the Benefits Review Board has allowed a claim of a laboratory analyst whose job was that of analyzing coal but never seen in or around a mine.

(D) Medical proof of disability/death due to pneumoconiosis

NAM firmly believes that Workers' Compensation awards, including Black Lung benefits, should be based exclusively upon medically determined disabilities. H.R. 4387 takes positive steps toward insuring that a claimant is required to medically prove disability/death due to pneumoconiosis prior to an award of benefits.

Medical evidence seems to suggest that disabling BL is not as widespread as benefit awards indicate. GAO reports that in 84 percent of the DOL approved claims which it examined, the medical evidence was not adequate to establish disability or death due to black lung. In addition, the National Institute for Occupational Safety and Health, in reporting certain results of the third round of examinations in the national coal workers' health surveillance program to this subcommittee, indicated that over 95 percent of those examined had no evidence of black lung, over 3 percent demonstrated stage one of simple CWP and no statistically significant number had advanced stages of simple CWP or the complicated disabling form of CWP (massive pulomonary fibrosis). Despite the reported low percentages of miners with disabling black lung, benefits in benefits paid in 1980 were the highest of any single year since its inception.

(E) Eliminate automatic survivors' benefits

NAM recommends the elimination of automatic survivors' benefits. Under current law, surviving spouses, surviving dependent children, brothers, sisters and parents may receive black lung benefits without proof that the miner actually died from pneumoconiosis. In fact, if the miner died before March 1, 1978 and worked in a mine for more than 25 years prior to June 30, 1971, it must be proved that such miner was not partially/totally disabled or else the survivors receive benefits regardless of how the miner died.

NAM's Workmens' Compensation Subcommittee believes that such presumptions and automatic benefits awards illustrate that the Black Lung program is being administered as a quasi-pension program. These features have no place in a disability system. It is also one example of why no state Workmens' Compensation program has complied with Department of Labor standards required to take over the program. State adoption of these features would truly destroy the Workmens' Compensation system as a wage-replacement program for work-related injuries/illnesses.

(F) Eliminate use of affidavits as sole evidence

NAM recommends the elimination of the use of affidavits from lay persons that deceased miners had pneumoconiosis as the basis for awarding benefits absent corroborating medical evidence.

GAO reported that in those cases approved by DOL on the basis of affidavits describing the deceased miners' physical condition, either: No other medical evidence of disability or death from black lung existed; or medical evidence indicated the miner had not been disabled or died from black lung. The statute requires approval of claims based upon such affidavits where there is no medical or other relevant evidence in the case of a deceased miner.

This type of statutory evidence does not encourage adequate consideration of claims. It typifies the inequities that exist throughout the black lung program which justify awarding benefits to all miners and their survivors regardless of the actual medical condition of the worker.

(G) Permit rereading of X-rays

NAM recommends the elimination of the restrictions on DOL re-reading x-ray evidence. After the 1972 amendments, any claimant whose claim had previously been denied had the right to have it reviewed. At the review hearing, the claimant had the right to introduce medical evidence, including the medical opinion of his own physician who may have read a previous x-ray. By contrast, DOL is not allowed to re-read x-rays that were originally read by a board certified/eligible radiologist if such x-rays were of good quality. NAM believes this offends concepts of fairness.

(H) Prohibit retroactive payments until HCC judicial proceedings adjudicated

NAM believes that the resolutions of all judicial proceedings involving a claim in controversy should be exhausted before back benefits are payable. Currently, once an initial decision has been made, all benefits are immediately payable without regard to the appeal process. The American Iron and Steel Institute reports that operators have a 40–45 percent reversal rate on the claims that are appealed. Past experience reveals that it is extremely difficult to recover benefits already paid.

(I) Grant trust fund authority to contest claims

NAM requests Congress to grant the Black Lung Trust Fund the authority to contest any claims for which it may ultimately be required to pay. Responsible operators are made a party to a claim and have the right to contest claims. In cases that are not payable by a responsible operator, the Trust Fund "picks up the tab." By not allowing the Trust Fund to defend its assets by contesting a claim, the statute imposes a tremendous injustice and offends traditional notions of fair play and due process. NAM urges this Committee to take action to combat fraud and abuse in the Black Lung system by permitting the Trust Fund to defend its assets by contesting the award of payments in those suits for which it will assume the ultimate liability.

CONCLUSION

Mr. Chairman, Members of the Subcommittee, the NAM concludes its testimony by respectfully requesting that you restore the Black Lung Disability Trust Fund to solvency by enacting reforms similar to those contained in H.R. 4387 together with an increase in the tax on coal as proposed by the Administration.

Thank you for the opportunity to present the concerns and attitudes of our membership on the problems which have resulted from federal intervention into a program which we feel is adequately covered by state Worker's Compensation systems.

ADDENDUM

NAM PRODUCT LIABILITY AND EMPLOYEE COMPENSATION SYSTEMS POLICY

IV. WORKERS' COMPENSATION

The National Association of Manufacturers believes that:

1. Workers' compensation programs should continue to be developed through legislation by the states, rather than the federal government. At the state levels, the benefits can best be tailored to fit local socio-economic conditions and such situations as may arise as the result of the introduction of new industries and technologies. Therefore, workers' compensation should continue to be regulated and administered by the states without intervention by the federal government.

2. The employer-financed state workers' compensation program should be recognized as the exclusive legal system for dealing with the physical and economic problems arising out of occupationally-connected disabilities.

3. State workers' compensation should provide adequate specified benefits related to earnings of those who have suffered a wage loss because of all injuries or diseases arising out of and in the course of employment, as well as prompt and full medical care.

In the best interest of the employee, the employer should be allowed to select competent physicians and other professional personnel to provide the medical care and treatment for which he is responsible.

4. State workers' compensation should encourage the hiring and continued employment of the physically handicapped through "second-injury" fund provisions. Such funds should be restricted to that purpose.

5. State workers' compensation programs should provide encouragement to the employer and the employee for comprehensive medical and vocational rehabilitation of the injured employee.

6. States should make determined efforts to improve administration, correct abuses, and eliminate unwarranted and wasteful awards.

7. Since state workers' compensation is a direct and complete charge on industry, it should not be extended to provide benefits for non-occupational disabilities or diseases or for conditions resulting from the normal aging processes.

The NAM endorses continuing evaluation of State Workers' Compensation Laws to assure their adequacy and efficient administration.

STATEMENTS OF JOHN A. CONLON, VICE PRESIDENT, PUBLIC AFFAIRS, AMAX COAL CO., AND W. K. C. MORGAN, M.D., PROFESSOR OF MEDICINE, BOTH ON BEHALF OF THE AMERICAN MINING CONGRESS

Mr. Conlon. Good afternoon, Mr. Chairman, I would respectfully request that our two written statements be made a permanent part of the record.

Chairman Rangel. Without objection.

Mr. Conlon. The health and safety of all who work in the mines is of the highest concern to our industry. We have, therefore, an abiding interest in the black lung benefits program.

We appreciate this opportunity to discuss the causes of the trust fund's insolvency and to explore possible solutions to this recurrent problem.

Because of time constraints, we will restrict our comments to a few major issues. However, our written statement deals with the broad range of matters which Congress should address in order to rectify the inequities and shortcomings of the existing program.

To begin with, it is AMC's belief that the insolvency of the black lung disability trust fund results from the unsound eligibility criteria of the enabling legislation and regulations, rather than the current level of tax receipts.

Unfortunately, corrective efforts to date have focused exclusively on increasing the tax and have not addressed the real problem.

Until the core deficiencies in the black lung program are corrected, there is no way to assess the liability of the trust fund. Once the needed basic reforms are achieved and the fund's liabilities recomputed to reflect those reforms, Congress can then determine the tax adjustment that may be appropriate.

In passing the 1969 Federal Coal Mine Health and Safety Act, Congress chose a two-pronged solution to the difficult issues presented by the tragic occurrence of coal workers' pneumoconiosis (CWP) in our Nation's coal mines. First, it created an interim compensation program because many State workers' compensation laws did not recognize occupational illnesses.

Second, it mandated maximum coal dust exposure standards which would protect miners from contracting CWP. This protection was combined with medical surveillance and transfer programs to remove miners with evidence of CWP from potentially dusty occupations.

The statutory dust exposure standards were based on British epidemiological studies which concluded that exposure over a miner's working lifetime at no more than the mandated levels would reduce the incidence of CWP to almost zero. Congress reasoned that this would essentially preclude all new miners from contracting CWP.

As a result of industry and government cooperation, significant strides in dust control were made, so that by 1973 the average dust concentration in underground coal mines was below the statutory standard.

By 1980, the dust level had been reduced to 1.1 milligrams of dust per cubic meter of air (mg/m3), far better than the 2 mg/m3 standard, which Congress determined would virtually eliminate CWP from the Nation's coal mines.

The dramatic success of the dust control efforts, coupled with the medical surveillance and transfer programs, stands in stark contrast to the financial insolvency of the black lung disability trust fund.

The compensation program, initially aimed at providing compensation to totally disabled miners not covered by State law, was amended in 1972 and again in 1977. Disability and the concept of work-related illness were eliminated as preconditions for compensation. In most instances, the present statutory provisions allow automatic compensation for miners who have worked a prescribed number of years.

The central shortcoming of the existing program is highlighted by the July 1980 Comptroller General's report, entitled "Legislation Allows Black Lung Benefits to be Awarded Without Adequate Evidence of Disability." According to this report, 88.5 percent of the claims reviewed by GAO which had been approved by the Social Security Administration did not contain adequate medical evidence to establish disability or death from CWP. Testimony by the GAO in July of this year indicates a similar percentage of inadequately proven claims were approved by the Department of Labor.

There are numerous provisions in the law which assure the continuation of black lung claims, regardless of the actual incidence of occupationally related disease. The law contains certain presumptions based on years of employment in the coal mines which encourage the payment of benefits regardless of the existence of occupational disease. For instance, there is a presumption that a miner died from black lung if his death resulted from a respiratory disease and he worked in a mine for at least 10 years. Similarly, there is a statutory presumption that a miner's total disability or death was caused by black lung if there is at least a 15-year employment history and any other evidence demonstrating the existence of respiratory or pulmonary impairment.

Tragically, respiratory disease is widespread throughout the general population, particularly among smokers. The presumptions in this statute result in payment of disability and death benefits without any work-related causal connection. The result is expansion of eligibility far beyond those miners disabled by coal workers' pneumoconiosis.

The problems created by the broad eligibility criteria are complicated further by statutory language prohibiting the government from rereading a claimant's X-ray—except in clear cases of fraud—and allowing claimants to use affidavits to substantiate claims in the case of a deceased miner where no other relevant medical evidence exists. Like the statutory presumptions, these provisions assure benefit payments regardless of whether disability or death is caused by coal workers' pneumoconiosis. These provisions, when coupled with the statutory presumptions, have—regrettably—led to extensive abuse, as established by the Comptroller General's report.

All of these provisions were intended to address the dilemma of miners or their survivors in cases where medical evidence was unavailable. They have outlived their purpose, however, because medical science can now accurately detect the existence of black lung. Our written statement includes materials prepared by Dr. Keith Morgan indicating the specificity and ease with which black lung can be diagnosed.

The mining industry is proud of its record in lowering the dust exposures of coal miners to a point which should prevent the occurrence of coal workers' pneumoconiosis. No other country in the world has dust standards as strict as ours. Far and away, we are the leaders in preventing coal workers from exposure to respirable dust, and, as detailed in our medical testimony, we will eliminate coal workers' pneumoconiosis. Yet, with the trust fund insolvent because of unsound eligibility criteria, we are dismayed to see Congress considering a tax increase which will further burden the industry—and, in turn, the American consumer.

If the congressional remedy is limited to just increasing the tax, the inequities in the law will continue. Payment of improper, unproven claims by both the fund and mine operators will continue—regardless of the improvements in dust control—regardless of the medical surveillance and transfer programs—and regardless of the ultimate elimination of coal workers' pneumoconiosis from our Nation's coal mines.

We urge a return of the black lung program to its intended purpose: Compensation for death or disability due to coal workers' pneumoconiosis. The only way to solve this problem is to address its root cause by rewriting the substantive provisions of the black lung program. The opportunity is at hand to achieve the balance needed in this program—a balance based on credible evidence and encompassing both compassion and common sense.

On behalf of the members of the American Mining Congress, we thank you for inviting us to express our views on this important matter.

[The prepared statements follow:]

Statement of The American Mining Congress

INTRODUCTION

The members of the American Mining Congress (AMC) sincerely appreciate this opportunity to discuss with you the causes of the insolvency of the Black Lung Disability Trust Fund.

AMC is a national trade association founded in 1897 which represents the producers of most of America's metals, coal, industrial and agricultural minerals processing machinery, equipment and supplies. As such, we represent producers of most of the nation's coal.

We are gratified that the black lung program is finally getting the comprehensive review it urgently needs.

The Black Lung Disability Trust Fund is currently insolvent. The American Mining Congress supports placing the trust fund on a sound financial footing. Unfortunately, efforts to date have been focused on increasing the tax on coal rather than on correcting the core deficiencies in the present law. It is our belief that the insolvency of the trust fund results from the unsound eligibility criteria of the present black lung law, along with a generally lax administration of the program, in part caused by the Department of Labor, but in large part by the requirements of the law.

Only after the deficiencies of the present black lung program are corrected can the actual liability of the Black Lung Disability Trust Fund be assessed. Therefore, we would urge Congress first to tighten the program's current overly-broad criteria, and then to conduct an actuarial study to determine the program's future liabilities. Only then can the appropriate methods for achieving solvency of the fund be determined.

Coal workers' pneumoconiosis (CWP), commonly known as "black lung," is a chronic disease of the lungs, caused by the long-term inhalation of coal dust. The disease is progressive and latent and requires many years of excessive dust exposure to develop. It was not until the 1950's that CWP was medically recognized as a disease in the United States.

In passing the 1969 Federal Coal Mine Health and Safety Act, Congress chose a two-pronged solution to the difficult issues presented by the tragic occurrence of CWP in our nation's coal mines. First, it created an interim compensation program because many state workmen's compensation laws did not recognize occupational illnesses. Second, it mandated maximum coal dust exposure standards which would protect miners from contracting CWP. The Congressional intent was clear: a short-term compensation program for miners who are disabled by CWP and a preventive occupational health law aimed at eliminating CWP from the nation's coal mines.

Efforts to reduce the incidence of CWP

The 1969 Act established maximum coal dust exposure standards based on British epidemiological studies which concluded that exposure over a miner's working lifetime at no more than the mandated levels would reduce the incidence of CWP to almost zero. Congress reasoned that this would essentially preclude all new miners from contracting CWP.

As an additional protection, in order to protect miners working at the time of the passage of the Act, Congress created medical surveillance programs; and, to prevent further advancement of the disease, miners with the slightest evidence of CWP were given the right to transfer, without loss of pay, to areas of the mine with extremely low dust concentrations.

The 1969 Act established a 3 milligrams of dust per cubic meter of air (mg/m^3) dust exposure standard for the three years following its passage. Thereafter, the Act required maximum exposures of 2.0 mg/m^3, a standard for which conclusive proof exists that over a working lifetime only a small fraction of one percent of miners would contract CWP.

As a result of significant strides in dust control techniques, by 1973 the average dust concentration in underground coal mines was 1.9 mg/m^3. By 1980, this level had been reduced to 1.1 mg/m^3, far better than the 2.0 mg/m^3 statutory standard which is known to prevent CWP even after 30 years of exposure. The cooperative efforts of industry and government which resulted in dust control technology advances along with the medical surveillance and transfer programs, will virtually eliminate the incidence of CWP in the future.

Failure of the compensation program

The dramatic success of dust control efforts stands in stark contrast to the financial insolvency of the Black Lung Disability Trust Fund.

The compensation program, initially aimed at providing compensation to totally disabled miners not covered by state law, was amended in 1972 and again in 1977. Disability or impairment as a precondition for compensation was eliminated. The present statutory provisions in most instances allow automatic compensation for miners who have worked a prescribed number of years. As such, the disability program has for all practical purposes become a pension program. Under existing laws and regulations, regardless of advances in dust control, regardless of the success of the medical surveillance and transfer programs, and regardless of the ultimate disappearance of CWP as an occupational disease in the United States, compensation will continue at a cost unparalleled by any other occupational disease compensation program in the history of the United States.

The central shortcoming of the existing program is highlighted by the Comptroller General's report, entitled "Legislation Allows Black Lung Benefits to be Awarded Without Adequate Evidence of Disability" (HRD-80-81, July 28, 1980). According to this report, 88.5% of the claims reviewed by GAO which had been approved by the Social Security Administration did not contain adequate medical evidence to establish disability or death from CWP. Testimony by the Comptroller General in

July of this year indicates a similar percentage of inadequately proven claims were approved by the Department of Labor.

These unproven claims were approved according to existing law. The statute contains certain presumptions that allow compensation without the need to prove disability or death from CWP. Unless Congress acts to amend the substantive provisions of the black lung program, benefits will continue to be awarded long after CWP disappears from the nation's coal mines.

Presumptions

There are two presumptions in the law which will result in the continuation of black lung claims regardless of the actual incidence of the disease.

There is a presumption that a miner died from black lung if his death resulted from a respiratory disease and he worked in a mine for at least 10 years.

Similarly, there is a statutory presumption that a miner's total disability or death was caused by black lung if there is at least a 15 year employment history and any other evidence demonstrating the existence of respiratory or pulmonary impairment.

These presumptions were enacted so as to address the dilemma of survivors who, because of the absence of any relevant medical evidence regarding the physical condition of deceased miners, could not establish a valid claim. The presumptions were to give the benefit of the doubt to survivors of miners who died many years ago, in cases where medical evidence was non-existent.

However, these presumptions have outlived their purpose. Medical science has developed to the point where black lung can be detected with accuracy. In addition, the claims of miners intended to benefit from this provision have been adjudicated. Thus, the continuation of these presumptions results in expansion of eligibility far beyond those miners disabled by coal workers' pneumoconiosis.

Definitions

In addition to the overly-broad eligibility criteria created by the statutory presumptions, there are several statutory definitions which have further broadened the number of persons eligible for benefits.

First, the law was changed in 1972 to include surface miners, whereas it had previously been limited to underground miners.

Second, the term "total disability" was redefined so that a miner would be considered totally disabled if his pneumonconiosis prevented him from engaging in gainful work which requires skills and ability similar to those he used while working in the mines. This allows miners who have been transferred to less rigorous work to be eligible to claim total disability.

The law was agin changed in 1977 when miners voiced objections that claims were being denied because a miner was working at the time he made his claim. Now, employed miners are eligible to apply for benefits, so long as they retire within one year of the determination of eligibility. This provision is totally confusing. A miner should not be considered totally disabled (under common meanings of the term) when he is still gainfully empolyed in a coal mine.

In 1977, the definition of miner was again expanded. "Miner" now includes those who work in coal mine construction and transportation in addition to those who work in and around a coal mine or coal preparation plant. Thus, under current law, individuals with little or no actual coal mining experience have been awarded benefits.

For example, in 1979, a survivor's claim was approved for the widow of a man who died from heart disease. He had worked a sum total of three weeks underground as a miner. However, for 46 years he had worked as a mine-clerk in offices located on mine property. Because of the liberal definition, his widow was able to qualify for benefits under the 25-year presumption of coal mine employment. Other claims have been approved for persons employed as laboratory technicians.

The term "miner" should be redefined so that only those people who actually mine coal or who work in or around a coal preparation facility be included, and then only those workers who are actually exposed to dust.

Pneumoconiosis, once a medical term, was also expanded by the 1977 Amendments. The new definition expands the term from a chronic disease of the lung caused by coal dust, to include respiratory and pulmonary impairments arising out of coal mine employment. This expansion has allowed for the award of benefits to miners with asthma, bronchitis and emphysema; diseases which are common in the general population and have no relationship to mining coal.

The original purpose of the Act was to provide a "one shot compensation deal" to underground coal miners totally disabled by black lung. However, this intent has changed significantly. In the 1972 and 1977 Amendments, far reaching changes were made, resulting in a complete overhaul of the Act. We urge Congress to amend the definitions in order to compensate only those who are truly disabled by CWP.

Rereading of X-rays

Another result of the 1977 Amendments was the provison prohibiting the government from rereading a claimant's x-ray if read by a radiologist or technician and of good quality. The rationale behind this prohibition was that too many claims were being denied on the basis of rereading of x-rays by government experts. Thus, under current law, if a qualified local physician makes an initial x-ray examination, finding the existence of black lung, there is no way the Federal government can require another reading absent clear cases of fraud.

This is an extraordinary provision which denies the government the use of experienced, trained lung x-ray readers (B-readers), to insure that the initial reading was correct. There have been numerous cases where one or more B-readers have read a miner's x-ray as negative for black lung. However, because of the prohibition against rereading of x-rays, benefits were paid from the trust fund based merely on the claimant's personal physician's reading. As Senator Chafee so aptly stated in floor debates on the provision, "It seems to me that that is a most extraordinary deprivation of the Government's right to protect the taxpayers of this Nation." (Legislative History, p. 1053).

Several examples of claims approved in this manner were documented in the GAO report.

Use of affidavit evidence

The 1977 Amendments expanded the use of affidavits to establish a claim in the case of a deceased miner where no other relevant medical evidence exists. The rationale behind this provision was to compensate the survivors of miners who died from black lung before the disease was recognized as such. However, today medical science has become sophisticated enough to prove or disprove the existence of black lung. Thus, the use of affidavits as sole establishment for valid claims is no longer viable.

The provision has, regrettably, led to extensive abuse. Those who will benefit most are often the ones who submit an affidavit. The GAO found that in 68 of the 78 cases studied (87 percent), the person who signed the affidavit attesting to the miner's physical impairment was the person who filed the claim and recieved the benefits. Statements by survivors saying that a miner "coughed and spit," had "miner's asthma" or had "shortness of breath" were accepted as proof of disability when medical evidence was not available. This provision is probably one of the most common reasons that the GAO concluded that 88.5 percent of its random sample of claims were not supported by adequate medical evidence of disability.

Affidavits, because of their potential for fraud, should never alone be dispositive of a claim. If allowed at all, they should be used only as a supplement to all other relevant evidence.

Unrelated death benefits

Because of the broad eligibility criteria, survivors (spouses, dependent children, brothers, sisters and parents) may apply for and recieve black lung benefits without having to prove that the miner died from pneumoconiosis. This further illustrates that the program has progressed beyond a disability program and has become a pension program with full survivors benefits. Regardless of the cause of death, if a miner had some disability due to black lung, his survivors can collect benefits. Coupled with the eligibility presumptions, the resulting situation is that an operator or the Department of Labor must prove that the miner did not have black lung.

Several examples which illustrate this problem are:

In 1980, a widow's claim was approved based on her deceased husband's 12 years of coal mine employment. The miner died as a result of being run over by a tractor operated by one of his own sons on the family farm. The autopsy report indicated that there was some evidence of CWP. However, reexamination of the evidence by an expert in CWP diagnosis indicated that the amount of dust accumulation in the lungs was no more than would be found in the lungs of individuals living in an urban environment. However, because of the use of the 10 year presumption, the miner's widow was able to qualify for benefits.

A miner with 36 years employment died from a heart attack while on vacation. The autopsy report indicated that the deceased had also suffered from severe emphysema. The widow's claim for black lung benefits was approved based on the use of the presumptions in the law.

Change is needed—the law should be restructured to require survivors to prove that the death of the miner was a direct result of CWP. Otherwise, the trust fund will continue to provide what is in effect a pension program to survivors, awarded primarily on the basis of years of employment rather than death or disability due to black lung.

Offset of other benefits

Currently, Federal black lung benefits are offset only by payments from a state black lung program. Other types of workers' compensation or disability benefits are not required to be offset against the black lung payment. Because of this, a miner in effect can be disabled twice. This "double-dipping" is a privilege afforded few other workers.

Payment of retroactive benefits before final adjudication

Another large drain on the trust fund is the practice of awarding all benefits to the claimant immediately following an initial entitlements decision. Presently 45-50 percent of the initial awards are reversed at final adjudication. A reversal requires the government to attempt to retrieve all funds paid out, a practice which is extremely difficult, even when a good faith effort is made. The Act should be amended to prohibit payments to the claimant until final adjudication of the claim.

Indexing

Currently, benefit payments are tied to the Federal civil service wage scale (½ of GS-2). These benefits are increased annually, resulting in an automatic inflation index. Since the black lung benefits were originally intended as a supplement to income rather than a sole source of income, the indexing provision is inappropriate and only results in greatly increasing the cost of the program.

Administration

Finally, we submit that much of the insolvency of the present trust fund is a result of administrative difficulties encountered by the Department of Labor in its attempt to interpret conflicting and ambiguous legislation. In the past, the Department of Labor's "interim" regulatory criteria for approving claims were even broader than the statutory provisions. Furthermore, under prior Administrations, the Department of Labor appeared more interested in approving claims than defending against them. In fact, in the majority of cases, the Department often failed to even appear, much less defend.

Notwithstanding the recent changes in the criteria for review of claims which have resulted in their improved handling, the underlying cause of the insolvency of the trust fund still exists. The insolvency of the trust fund will continue until such time as Congress undertakes a complete review of the existing legislation and adopts appropriate corrective legislation.

CONCLUSION

The American Mining Congress supports benefits for miners who are disabled by coal workers' pneumoconiosis: The issue is whether Congress is going to continue to allow those with no evidence of disease to collect black lung benefits.

The reason we are here today is that the trust fund is insolvent. We submit that this is because of the overly-broad eligibility criteria and lax administration of the law. A tax increase alone will not solve the problem nor cure the deficiencies in the law which led to the insolvency.

Testimony was presented in July that the number of Black Lung Trust Fund claims will significantly decrease in future years. This is true because the trust fund is primarily responsible for claims in which no mine operator is found to be responsible for claims; and in the future, mine operators themselves will be responsible for a far greater number of claims. However, unless the statutory framework is changed, these operators will still be liable for the same type of claims which have been responsible for the present insolvency of the trust fund. Ultimately, it is the consumers who will continue to pay for unfounded claims, resulting in the price of energy continuing to add to the inflationary spiral.

If a Congressional remedy is limited to increasing the tax, the inequities in the law will still exist—inequities to the coal producer, his customers, and ultimately the consumer. The overly broad presumptions and definitions in the Act must be changed; criteria which allow a miner (or his survivors) to collect, regardless of the cause of death, regardless of disability, regardless of adequate medical evidence. The problems of this program under the present statute will continue regardless of the strides in dust control, regardless of the medical surveillance and transfer programs and regardless of the ultimate elimination of CWP from our nation's coal mines.

The statutory presumptions and definitions require immediate attention. The Comptroller General's report is an irrefutable indictment of the existing statute.

The evidence is clear and convincing. A tax increase without substantive amendments is a "Band-Aid" and not a cure. Our economy cannot tolerate a continuation of the old ways. Our taxpayers deserve better treatment. We urge a return of the black lung program to its intended purpose: Compensation for death or disability due to coal workers' pneumoconiosis. The only way to truly solve the problem at hand is to address the substantive provisions of the black lung program.

Thank you again for the opportunity to present our views on this important legislative issue.

STATEMENT OF DR. W. K. C. MORGAN, PROFESSOR OF MEDICINE, ON BEHALF OF THE AMERICAN MINING CONGRESS

Mr. Chairman, members of the committee, ladies and gentlemen, I am honored to testify before your Committee. For the seven or so years prior to March 1974, as an employee of the U.S. Public Health Service, I was responsible for the Govenmental Research program that was and is directed toward solving some of the respiratory problems that afflict U.S. coal miners. Much of the research that was carried out during the time that I was Director of the Appalachian Laboratory for Occupational Respiratory Diseases was published several years ago and has a direct bearing on the matters which you are considering today. Because of your over-filled schedules, I am sure you have not had time to read and digest the medical and scientific literature on this subject. You will perhaps bear with me while I review some of the more important aspects of the health effects of coal dust inhalation.

Coal miners, as a result of their job, can contract three separate diseases, mamely, coal workers' pneumoconiosis (CWP), industrial bronchitis and silicosis. The latter is seen only in those miners who are employed on transportation and roof bolting. In a motor man, the disease arises as a result of the inhalation of aerosolized sand which has been applied to the rails in order to obtain traction for the small trains which are used to shift the coal from the face to the portal, while in roofbolters the condition results from boring through rock strata outside of the coal seam. Silicosis can be diagnosed only when the chest x-ray is abnormal.

Coal workers' pneumoconiosis (CWP)

CWP is best defined as the accumulation of coal dust in the lungs and the tissues' reaction to its presence. To refer to other lung conditions, such as bronchitis and emphysema as CWP or black lung serves only to confuse since these conditions are separate entities, and their manifestations and clinical features are entirely different. Moreover, these diseases occur frequently in the general population and when they do so, dust exposure plays no part in their development. The international scientific community reserves the term CWP for a condition which is diagnosed from a suitable history of exposure to coal dust plus some relatively characteristic x-ray abnormalities.

Some dust accumulation in the lungs is inevitable and occurs irrespective of the person's occupation. The lungs of most city dwellers appear mottled and have black spots present on them. These black spots are a consequence of the inhalation of particles and pollutants contained in the urban air. Such pigment deposition cannot be regarded as a disease unless it interferes with lung function or shortens life espectancy. This is the case in most forms of simple CWP and in many instances the dust content of the lungs of an urban dweller is as high as it is in many coal miners. (1)

There are two forms of CWP, simple and complicated. Simple CWP results from the inhalation and retention of coal dust alone and is recognized by the number or profusion of small opacities in the chest x-ray. It is divided into categories, 1, 2, and 3 according to the profusion of such small opacities. The International Labour Organization (ILO) has distributed a set of x-rays which illustrates the various categories, and when a physician is interpreting an unknown film he should attempt to match or compare the unknown film with the various ILO standards. There is a direct relationship between the coal dust content of the lungs and the x-ray category, and therefore the chest x-ray is a useful means of monitoring dust exposure. (2, 3) When there are no x-ray changes, it can safely be assumed that the amount of dust present in the lungs is insignificant and will not lead to disease.

The pathological features of simple CWP have been well described. After prolonged exposure, usually some twenty to thirty years, the lung defenses are overcome, and dust starts to accumulate around the respiratory bronchioles. The latter are some of the smaller air passages which convey air to those portions of the lung where gas exchange occurs. Such accumulations of dust are often referred to as macules. Later, the smooth muscle in the respiratory bronchiolar wall atrophies.

This leads to a dilatation of the bronchiole, a condition often referred to as focal emphysema. This latter condition does not affect to any extent the gas exchanging units of the lung or alveoli and for this reason does not affect the ability of the lungs to take air in and out. (3) In Category 1 simple pneumoconiosis, even the most sophisticated and sensitive pulmonary function tests fail to reveal any abnormality. However, occasionally in Categories 2 and 3, there may be minimal abnormalities of the distribution of inspired gas, and exceptionally, in a certain type of pneumoconiosis, there may be minimal abnormalities of gas exchange. (4)

Progressive massive fibrosis (PMF) or complicated pneumoconiosis

Progressive massive fibrosis (PMF) occurs as a complication of categories 2 or 3 simple CWP but, besides coal dust, another factor as yet unknown is necessary for its induction. Unlike simple CWP, PMF is associated with respiratory impairment, permanent disability and premature death. (4) However, in many instances the impairment may be mild, there may be no disability and the subject may have a normal life expectancy. PMF also differs from simple CWP in that it may develop several years after exposure has ceased, and may progress in the absence of further exposure. The more advanced stages are associated with both restrictive and obstructive impairment, such impairments being a direct consequence of the large fibrotic masses that characterize this condition. Nonetheless, only one to three percent of working miners have PMF and even in retired miners, the figure is not much higher. In Utah and Colorado, the figure is around 0.5 percent. Since the lungs have to be primed by an appreciable burden of dust before the condition develops, the need for dust control should be obvious. A reduction in the number of miners with Categories 2 and 3 simple pneumoconiosis always leads to a concomitant decline in the incidence of PMF.

Currently, there is a widespread belief that coal miners are frequently affected by a disabling and fatal disease which is variously referred to as black lung or CWP. It has been stated by Sam Church, President of the UMWA, (5) that 4,000 miners die every year of black lung, which suggests that nearly all deaths in coal miners are due to black lung and that miners are almost exempt from all other causes of death. Ex cathedra pronouncements of this type have been repeated by the media and now seem to be accepted as gospel. In reality, there is no basis for these statements, and coal miners have a normal life expectancy. This has been shown in several NIOSH studies, one of which included a large number of miners covered by the UMWA Health and Retirement Funds. (5,6) It is also clear that miners with simple CWP have a normal life expectancy while complicated CWP not uncommonly leads to premature death. It might well be asked why, if PMF is associated with a decreased longevity, this is not reflected in the standardized mortality ratio (life expectancy). The answer lies in the fact that the increased death rate from PMF is compensated for by the decreased death rate from heart disease and lung cancer. (8,9) The USPHS studies have shown that while dust exposure did not affect life expectancy, cigarette smoking had a profound affect. (5)

I would also add that my colleagues and I, during the time I was Director of Alford, used the latest and most sensitive tests of pulmonary function to characterize the range of function of abnormalities produced by CWP. These findings have been described in a series of papers and have been summarized in the State of the Art Review published in the American Review of Respiratory Diseases. (4) Suffice it to say that while Categories 2 and 3 simple CWP are associated in some instances with some minor impairments, these impairments are in no way disabling. Elsewhere, Dr. Kerr of the UMWA tells us that 70,000 bituminous and 30,000 anthracite miners are diabled from black lung and that 20,000 of these are respiratory cripples incapable of any form of activity. (10) This unsupported allegation cannot be reconciled with the medical evidence showing no decreased life expectancy.

Industrial bronchitis

I would now like to turn my attention to this condition. It has been noted in several countries that many dusty trades, and in particular coal and metal mining, are associated with an increased prevalence of cough and sputum and occasionally with a minor reduction of ventilatory capacity. I am using the term ventilatory capacity here to denote the body's ability to take air in and out of the lungs. This function of the lungs is often referred to as the bellows function since the lungs can be compared to a pair of bellows.

The presence of increased cough and sputum and the minimal reduction in ventilatory capacity occurs no more commonly in those coal miners who have simple coal workers' pneumoconiosis than it does in those with normal chest x-rays. Increasing the category of simple CWP, and hence by inference the increased coal dust content of the lungs, does not lead to a concomitant decline in ventilatory capacity as measured by the commonly used tests of this function, i.e. the forced expiratory volume in one second (FEV_1). Thus, the inference to be drawn from this observation is that the cause of the reduced FEV_1 is unrelated to simple CWP and is due to some form of airways obstruction which is peculiar to dusty trades. Arguments setting forth the reasons for these beliefs have been described elsewhere. (9) Currently available evidence indicates that industrial bronchitis is a definite condition which is due to the deposition of dust in the trachea and bronchi; that is to say, the airways that carry the inhaled air to the gas exchanging portions of the lung. Those particles which are deposited in the conducting airways are swept up on a bed of mucus and subsequently spat out or swallowed. Hence, they do not accumulate in the body and a result there are no x-ray changes. The body has to produce the excess as a defense in order to aid in the elimination of these particles, and it is the excess production of mucus that leads to the development of cough and phlegm. Industrial bronchitis sometimes leads to minimal obstruction of the large airways, but as such this is never disabling. Moreover, unlike the bronchitis which is induced by cigarette smoke, it does not lead to emphysema or destruction of the gas exchanging portions of the lung. (10)

At this juncture, I should state that when I was Director of Alford, my colleagues and I designed what is now know as the National Coal study, the purpose of which was to make serial measurements of lung function and x-ray changes in a large group of working coal miners and to relate them to the dust measurements which were then being mde by the then Bureau of Mines. The x-ray and pulmonary function tests were to be repeated at an interval of three years and then again at further intervals not to exceed five years between each round of examinations. The study commenced in 1969 and three rounds have been completed. The results of the second the third rounds have not been published despite the fact they have now been completed for some time. Recently, and this unfortunately I have from hearsay, Dr. Merchant who succeeded me as Director of Alford testified before the present Committee, and stated that although the analysis was not yet complete, it was his impression that the effects of cigarette smoking and dust on ventilatory capacity were about equal. This statement I strongly suspect is inaccurate, and I would suggest that the publication of the results of the second and third rounds is long overdue for reasons about which I can only surmise.

My former colleagues, Drs. Kibelstis and Lapp studied the prevalence and the effects of bronchitis in those miners who were included in the National Coal Study. (11) While it was just possible to show that dust did have an effect on lung function, it was clinically insignificant. Thus, when we compared non-smoking face workers with non-smoking surface workers, the FEV_1 of the face worker was 98 percent of the predicted normal value, while that of the surface worker was 102 percent of the predicted normal value. Because of the large number of subjects included in this study, these figures achieved statistical significance, but they have no clinical import and do not affect working capacity. Moreover, our studies showed that smoking had six to ten times the effect of dust exposure on ventilatory capacity. Industrial bronchitis is non-specific and prolonged exposure to any sort of dust, including cotton, silica, cement and numerous other inert particles will lead to its development. Moreover, its effects on lung function are insignificant and barely detectable, and in support of this statement I would refer you to a recent study from the University of Utah Medical School (12), and extensive studies that have been carried out in Germany with precisely similar findings to what I have described. (13) These have been published as a monograph.

Disability determination

I would now like to say a few words about the problem of disability determination. For four years after I left the U.S. Public Health Service, my colleague, Dr. Lapp and I saw a large number of coal miners referred by the Department of Labor for disability evaluation. I also acted as a consultant to the Social Security Administration. My experience was indeed an eye opener to me and there were occasions, when we at West Virginia University had tested claimants and found them to be entirely normal, yet subsequently heard that they had been granted total and permanent disability. Over the past seven to eight years I have seen awards based on entirely worthless pulmonary function tests and blatantly incorrect X-ray interpretations. These inconsistencies have been alluded to in the GAO report to Congress concerning the black lung awards made by Social Security.

Because of the inaccurate readings for pneumoconiosis in the first round of X-ray examinations mandated by Congress, NIOSH and the American College of Radiology devised the B reader examination. The problems of permitting any reader to interpret films, whether Board certified or not, are referred to in a paper by Felson and colleagues. (14) However, when it comes to the interpretation of X-rays in disability claimants, the situation becomes ludicrous. I regret that many radiologists invariably interpret every film as positive. In the case of certain radiologists whose services are invariably given to the claimants, I have yet to see an X-ray which has not been read as positive. In looking through a hundred consecutive reports of one of these radiologists, all of which were reported as either category 2 or 3 simple CWP, only seven were subsequently reported as positive by a B reader.

Drs. Lapp, Seaton and I recently published a paper dealing with our experience of 150 consecutive black lung disability referrals from the Department of Labor. (17) Only eight met the criteria for disability due to ventilatory impairment and all were cigarette smokers. From our broad experience in this field, it is apparent that truly disabling respiratory impairment is no more common in coal miners than it is in the general population. Perhaps the multitude of claimants is explained by the fact that in some states the combined disability benefits for black lung may exceed the wages of the working coal miners. Thus, two years ago, a 62 year old single Pennsylvania coal miner each month receives $424,000 from Social Security, Union pension of $420,000 and $1,047.00 from Pennsylvania Workmen's Compensation. This amounted to an annual income of $22,692.00 and only the pension is taxable. Under present increased benefit schedules these numbers can be significantly higher Such a system offers a strong financial incentive for the claimant to exaggerate the severity of his symptoms.

Since the main criterion for which disability for black lung is awarded is the presence of airways obstruction, that is to say an increase in resistance to flow in the airways, the obvious inference that one draws is that the inhalation of coal dust leads to disabling airways obstruction. I have, however, already stated that this is not the case, and that when airways obstruction is present in miners to such an extent that he qualifies for black lung benefits, then he either has complicated pneumoconiosis and qualifies on the basis of his X-ray alone, or he has emphysema as a result of cigarette smoking. This was confirmed in the study of the 150 applicants mentioned above. (17) The widely held belief that dust control is the answer to the prevention of disabling pulmonary impairment in coal miners needs examining. At the present time most awards are made to men who have cigarette-smoke induced emphysema, and to believe that dust control is going to eradicate this condition is best labelled "The Immaculate Deception." Moreover, the medical criteria for permanent total disability which were proposed by the Department of Labor and subsequently accepted, are about twice as liberal as those which operate in other countries such as Belgium, Germany and France.

The present method of awarding compensation to miners who are presumed disabled from CWP is not operating in the manner Congress intended. To correct this situation, impairment needs to be assessed accurately by pulmonary function tests, and x-rays need to be interpreted by disinterested, impartial, but experienced observers. A series of recommendations for disability determination have been put forward by the American Thoracic Society, and if adopted, would put disability determination on a fair and objective basis. I earnestly commend them to you for your consideration.

Because of the long-term epidemiological studies which have been carried out in Great Britain and Germany, we are now aware of the magnitude of the risks of exposure to certain dust levels.(18, 19) Thus, it is now clear that, provided the dust level is below 3.5 mgm/M^3 for an eight-hour shift, then less than 3.5 percent of miners who start working with a clear chest x-ray and who continue to work for 35 years for 40 hours a week, will develop category 2 or above simple pneumoconiosis. These facts need to be taken into consideration when it is remembered that the present U.S. coal dust standard is 2 mgm/M^3. Almost all U.S. coal mines are presently in compliance with the standard. In fact, by 1980, the average dust concentration in U.S. mines was 1.1 mgm/M^3. Based on extensive epidemiological studies, one would expect that over the next 30 years, coal miners' pneumoconiosis should indeed become a rarity in the U.S. However, the frequency of black lung compensation will remain relatively unchanged unless there is a change in the smoking habits of coal miners.

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Chairman **Rangel**. John Stenmark.

STATEMENT OF JOHN STENMARK, VICE PRESIDENT, AMERICAN IRON AND STEEL INSTITUTE

Mr. **Stenmark**. Thank you, Mr. Chairman, I am John Stenmark, vice president, industrial relations, American Iron and Steel Institute.

We respectfully request that our full written statement be included within the record, and I will try to summarize briefly from that.

Mr. **Stenmark**. The AISI represents 65 domestic steel companies, which account for approximately 93 percent of domestic raw steel production and 6.7 percent of domestic coal production. In 1980, the domestic steel industry consumed over 61 million tons of coal, primarily for the production of coke. That tonnage does not reflect purchased coke or coal consumed in generating electricity used by the steel mills.

In 1979, coal mines owned by steel companies produced almost 56 million tons of coal. National coal production overall was almost 824 million tons. Thus, steel companies pay over $27 million per year into the black lung trust fund as coal producers alone, and pay additional millions as the tax on coal used to make purchased coke and energy is passed through to steelmakers and then to consumers. The tax increase considered but not included in the recently passed reconciliation bill would have doubled the steel industry's cost to support the black lung fund. The tax is in addition to benefits steel companies must pay to employees under both Federal and State black lung programs.

The Federal black lung program was originally intended to provide relief to coal miners until the lowered dust hazards mandated by the 1969 Federal Coal Mine Health and Safety Act took effect and until the States adopted benefit programs covering miners disabled from black lung.

It was determined, based on medical evidence, that exposure to dust levels below 2mg/M-3 would cause little or no risk of coal miners' pneumoconiosis. These levels have been attained and exceeded. Mines in 1980 showed an average dust exposure of 1.1 mg/M-3 according to MSHA data. Furthermore, States have developed programs to compensate miners for pneumoconiosis, yet the Federal program continues and industry is heavily impacted by the current black lung program and would be further substantially impacted by any tax increase.

There is surely no need in the mines for a supplemental pension program. A miner currently retiring under the BCOA-UMW contract receives an employer-paid pension which, for a miner with 35 years' experience, equals $530 per month. This is not offset by receipt of a black lung benefit. This contract pension is in addition to social security benefits.

Those who are truly disabled from coal workers' pneumoconiosis should receive ample and well-financed benefits. However, the program as it is now administered is an irresponsible allocation of taxpayers' funds directed to an array of claimants most often with no causal evidence of black lung disability in a vast majority of claims now being paid. We have discussed all of our suggestions in detail in our written statement. We will highlight a few of these suggestions in our oral statement today.

We believe that the Federal black lung program needs serious reform before the coal industry—and the consumers of this country—should be asked to pay increased taxes to support it. As the committee and all of us are well aware, the trust fund is in serious financial trouble. This is the direct result of the statutory structuring of the black lung benefits program. Before any change in the tax is considered, we believe that the committee must insist on substantial reform of the black lung program.

We urge first that Congress return this program to the States. There is no longer any sound administrative reason to maintain a Federal worker's compensation program for one relatively small group of employees covering one disease when all other employees and all other compensable disabilities in private industry are handled by State worker's compensation programs. There is no longer any sound reason for this special attention.

State programs now cover this disease in nearly every instance. The reason that State programs have not been approved under the transfer provisions of the present Federal black lung law is the requirement that the States adopt the same standards as are found in the Federal law, including use of the loosely drawn Federal evidentiary presumptions, and the provision for automatic death benefits. States are unwilling to adopt these provisions since these would in most cases result in an unsupportable dismantling of responsive worker's compensation rules.

If the Federal program is retained for any additional time, we urge the Congress to amend the program immediately so that the costs of the program are brought under specific control, and the taxes and benefits paid by the coal industry do not continue to be squandered.

The definition of pneumoconiosis was expanded in 1977 to include the "sequalae, including respiratory and pulmonary impairments arising out of coal-mine employment"—a definitional concept of disease that has no objective basis for determination. This expansive definition of pneumoconiosis illustrates the political nature of the eligibility requirements, which have become the bases for inclusion of several diseases which either have no causal connection to coal mine exposure such as lung cancer, or have no disabling effects such as anthracosis. As Dr. Miller of NIOSH pointed out in his testimony to this committee, there is no evidence of an increased incidence of lung cancer among coal miners. [NIOSH testimony, page 3.]

Congress wrote into the black lung statute a special definition of disability. According to the statute, a miner is considered disabled when the pneumoconiosis prevents him or her from "engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time." [Section 402(f).]

Furthermore, the survivors of a deceased miner are not to be denied benefits because the miner was still working at the time of his death. The definition of disability in the black lung statute is at odds with the definition of disability in comparable programs such as the social security disability program. Under that program, disability is defined as "the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment."

The social security regulations state that to "meet this definition you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy." [20 CFR 404.1505(a).] The focus in this definition is inability to do any kind of work. The definition of disability under the black lung statute considers only the miner's ability to do the job he had previously done, not his ability to do other work, including other work at the mine.

Claims which are not payable by a responsible operator are paid by the black lung benefits trust fund. Yet, incredibly, the fund is excluded as a party of interest to claim cases and, thus, has no right to contest claims it must ultimately pay. And since there is no employer to contest the claims, the initial determination, if favorable to the claimants, is not again reviewed.

Denying the fund the right to protect its assets from the decisions of the program administrators, given the track record of these administrators as illustrated by the testimony of the GAO, clearly leaves the fund open to continuing financial insolvency.

PAYMENT OF RETROACTIVE BENEFITS

Under current practice, once an initial decision is made to award benefits, they are immediately payable, including benefits from the date of application. In the event of reversal, it has proved extremely difficult to reclaim these amounts according to GAO statements and testimony.

Given the fact that coal operators—as opposed to the trust fund—have experienced a significant reversal rate—approximately 40 precent—despite the liberal standards in the law, it seems foolish to pay benefits until a case decision is final.

In conclusion, the AISI believes that before the tax rate is changed, the Ways and Means Committee should insist that the black lung program be thoroughly reformed.

Finally, the coal-producing companies of the steel industry do not support the transfer to the fund of those claims which were denied and subsequently approved as a result of the 1977 amendments on the basis that this would further exacerbate the financial condition of the fund.

[The prepared statement and letter follow:]

STATEMENT OF THE AMERICAN IRON AND STEEL INSTITUTE

Good day, Mr. Chairman and members of the subcommittee. My name is John Stenmark, Vice President—Industrial Relations, American Iron and Steel Institute, and I am testifying today on behalf of the American Iron and Steel Institute (AISI).

THE AMERICAN IRON AND STEEL INSTITUTE REPRESENTS SIGNIFICANT MINERS AND CONSUMERS OF COAL

The AISI represents 65 domestic steel companies which account for approximately 93 percent of domestic raw steel production and 6.7 percent of domestic coal production. In 1980 the domestic steel industry consumed 61,457,000 tons of coal primarily for the production of coke. That tonnage does not reflect purchased coke or coal consumed in generating electricity used by the steel mills. In 1979, coal mines owned by steel companies produced 55,597,000 tons of coal. National coal production overall equaled 823,644,000 tons. Thus steel companies pay over $27,000,000 per year into the Black Lung Benefits Trust Fund as coal producers alone, as well as additional millions as the tax on coal used to make purchased coke and energy is passed through to steel consumers. The tax increase considered in the recent reconciliation bill would have doubled the steel industry's costs to support the Black Lung Fund. And the tax is in addition to benefits steel companies must pay to employees under both federal and state black lung programs. Clearly the steel industry is heavily impacted by the black lung program and the proposed tax.

THE SERIOUS PROBLEMS WITH THE BLACK LUNG PROGRAM REQUIRE DRASTIC REFORM

We believe that the federal black lung program needs serious reform before the coal industry—and the energy consumers of this country—should be asked to pay increased taxes to support it. As the Committee and all of us are well aware, the Trust Fund is in serious financial trouble. This is the direct result of the statutory structuring of the black lung program. Before any change in the tax is considered we believe that the Committee must insist on substantial reform of the black lung program.

We urge first that Congress return this program to the States. There is no longer any sound administrative reason to maintain a federal workers' compensation program for one group of private employees covering one disease when all other employees, and all other compensable disabilities are handled by state workmen's compensation programs. There is no longer any sound reason for this special attention. State programs now cover this disease in nearly every instance. The reason that State programs have not been approved under the transfer provisions of the present federal black lung law is the requirement that the States adopt the same standards as are found in the federal law, including use of the loosely drawn federal evidentiary presumptions, and the provision for automatic death benefits. States are unwilling to adopt these provisions since these would in most cases result in an unsupportable dismantling of responsible worker's compensation rules.

If the federal program is retained for any additional time, we urge the Congress to amend the program immediately so that the costs of the program are given a semblance of control, and the taxes and benefits paid by the coal industry do not continue to be squandered. As a minimum, the program should be amended as follows: (1) The statutory presumptions of eligibility should be eliminated entirely; (2) the definition of miner should be revised to cover only those who have actually worked in the extraction of coal and have been exposed to hazardous levels of coal dust; (3) the definition of pneumoconiosis should be revised to preclude the present expansion of coverage to unrelated lung diseases; (4) automatic survivors' benefits should be ended, and adequate evidence of death from pneumoconiosis be required; (5) the use of affidavit evidence to establish eligibility should be eliminated; (6) prohibitions on the re-reading of x-ray evidence should be eliminated; (7) retroactive payments should be made payable only after all judicial proceedings on a claim have been completed; and (8) the Black Lung Benefits Trust Fund should be given the right to contest spurious claims for which it would otherwise be liable.

There is surely no need in the mines for a supplemental pension program. A miner currently retiring under the BCOA-UMW contract receives an employer-paid pension which for a miner with 35 years' experience equals $530 per month. This is not offset by receipt of any black lung benefit. This contract pension is in addition to the social security pension. Those who are truly disabled from coal workers' pneumoconiosis should receive ample and well-financed benefits. However, the program as it is now administered is an irresponsible allocation of taxpayers' funds, directed to an array of claimants most often with no causal evidence of black lung disability in a vast majority of claims now being paid.

AN UNNECESSARILY LIBERAL BLACK LUNG PROGRAM HAS BEEN CREATED

Coal workers' pneumoconiosis is a disease characterized by the Surgeon General as "a chronic chest disease, cause by the accumulation of fine coal dust particles in the human lung. In its advanced form, it leads to severe disability and premature death." (S. Rept. 95-209 to accompany S. 1538, May 16, 1977, House Committee on Education and Labor, February, 1979, reprinted in Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977 (hereinafter cited as Legislative History.) This disease has been since 1969, covered by a unique federal compensation program which applies only to this disease. The black lung program was originally intended to provide relief over a short period of time to miners disabled from black lung disease while the dust level standards set in the 1969 Coal Mine Health and Safety Act took effect. These standards have effectively reduced coal mine dust to levels below the threshold level required to trigger pneumoconiosis.

The 1969 Coal Mine Health and Safety Act established maximum coal dust exposure levels based on a series of British studies which concluded that lowering dust exposure to levels below those mandated in the statute would preclude all new miners from contracting coal workers' pneumoconiosis. The House Committee in adopting a 3 mg/m^3 dust exposure standards, said: "The British have concluded, from statistical analysis, that the probability of a miner contracting pneumoconiosis (ILO category 1 or greater) after 35 years of exposure to a mean total respirable dust concentration of 3.0 mg/m^3 is about 5 percent. The probability of a miner contracting pneumoconiosis (ILO category 2 or greater) after the same period of exposure in the same mine environment is about 2 percent. In a dust environment below about 2.2 mg/m^3 there is virtually no probability of a miner contracting pneumoconiosis (ILO category 2 or greater) even after 35 years of exposure to such concentration." (House Rept. 91-536 to accompany H.R. 13950 (Oct. 13, 1969), reprinted in 1969 U.S. Code Congressional and Administrative News 2521.)

In the end the Secretary of Labor adopted a 2 mg/m^3 dust standard which remains in effect today. Average dust levels in underground mines have proven to be around 1.1 mg/m^3 in fiscal year 1980 according to MSHA data.[1] The low dust levels should, according to all medical evidence, greatly reduce the incidence of coal workers' pneumoconiosis (see Testimony of Dr. J. Donald Millar, Director, NIOSH, before the Oversight Subcommittee of the House Ways and Means Committee, July 27, 1981). Despite the reduction in dust levels the black lung payments program has grown rapidly. This can be explained by the legislative liberalization of the program in 1972, and 1977.

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[1] Letter from Joseph A. Lamonica, Acting Administrator for Coal Mine Safety and Health, to Robert L. Viner, Vice President of the Bituminous Coal Operators Association, dated Nov. 25, 1980.

Since 1969, through a series of legislative amendments, the coverage of the program has been extended from those who are totally disabled from black lung disease to those who have no disability resulting from pneumoconiosis or coal mine related respiratory diseases.

The financial difficulties of the Black Lung Benefits Trust Fund can be traced directly to the expansion of the black lung program to cover both those who are not disabled, and those who are not disabled as a result of coal workers' pneumoconiosis. Congress started with a disability compensation program but has ended up with what is now virtually a pension program for miners and their dependents, and it is out of control. This is the reason the Trust Fund cannot pay its way.

SPECIFIC DEFECTS IN THE BLACK LUNG STATUTE HAVE CAUSED THE TRUST FUND'S FINANCIAL PROBLEMS

(a) Presumptions

The black lung benefits statute contains a series of legal presumptions which require at least the shifting of the burden of proof, and in some cases require a finding that disabling pneumoconiosis exits, if the miner has (A) some lung problems and (B) has worked in the mines for more than ten years. A deceased miner who worked for ten or more years in a coal mine and died from a respirable disease is rebuttably presumed to have died from pneumoconiosis. A miner who has worked in underground coal mines for 15 or more years and is suffering from a disabling lung disease is presumed to have pneumoconiosis even if there is no x-ray evidence of the presence of pneumoconiosis. The survivors of a miner who worked for 25 or more years in the coal mines before June 30, 1971 are automatically entitled to benefits unless the employer can prove a negative, i.e., that the miner was not totally or partially disabled by pneumoconiosis at the time of his death. If analogous presumptions were extended to occupational diseases arising in other industries, the cost of supporting the compensation programs for occupational disease would be ludicrous.

The black lung presumptions may have been partially justified when they were originally enacted, on the basis that medical evidence of black lung disease was then difficult to obtain, particularly by the survivors of miners who may have died before the disease became a matter of widespread attention and more readily diagnosed. Whatever credibility that theory may have had then, it has none now. Those presumptions were based on the erroneous assumption that the presence of any pneumoconiosis is disabling; and that employment in the mines over a period of years will inevitably cause the miner to have disabling pneumoconiosis. Congress ignored medical testimony which clearly established that pneumoconiosis is only disabling when it is complicated pneumoconiosis. In the Minority Views to the House Report in the 1977 Black Lung Amendments it was pointed out that: "Medical testimony (Dr. Keith Morgan, West Virginia Medical Center, formerly Director, Appalachian Laboratory for Occupational Respiratory Disease; Dr. Leroy Lapp, West Virginia Medical Center; Dr. Donald Rasmussen, Appalachian Regional Hospital) before our Committee in 1975 demonstrated that miners with clear x-rays and miners with simple pneumoconiosis even with 35 or more years of coal dust exposure, have normal ventilatory capacities—that is the ability to get air in and out of lungs—and only a slight reduction of diffusing capacity—gas transfer—a decrease of insufficient severity to be associated with disability. As a matter of fact, Dr. Morgan states: *The U.S. Public Health Service studies indicate that cigarette smoking is between 5 and 10 times as important as dust exposure in producing impairment of ventilatory capacity. Actual disability is usually associated with complicated pneumoconiosis, which may be found in only about 2.9 percent of the working miners, 10–12 percent of the retired miners, and only about 0.1 percent of the coal miners in Utah and Colorado.* (emphasis supplied)

(House Report No. 95–151 to accompany H.R. 4544, March 31, 1977 Minority Views (p. 588, Legislative History))

Congress decided to postulate that the existence of simple pneumoconiosis meant total disability for purposes of black lung payments. Congress insisted that length of time spent around mines should necessarily predict disability from pneumoconiosis, against medical evidence that length of exposure was not a reliable predictor of disability. Congress disregarded the different impact of lesser dust exposures or exposures to different kinds of dust, as well as the impact of cigarette smoking and other health problems. The Minority Views cited above quote Dr. Leroy Lapp of the West Virginia Medical Center: "Thus the preponderance of medical evidence does not support the presumption that because a man has worked for 25 years or more in an underground coal mine that he should be necessarily totally disabled due to pneumoconiosis or that his death should have occurred as a result of such pneumoconiosis unless the individual has radiographic evidence of the complicated form of the disease." (Legislative History, p. 589)

The notion that benefits should be paid to claimants who have no evidence of the disease turns the entire basis of the workers' compensation system inside out. It goes beyond even the well-established principle of viewing claimants' evidence in the most favorable light. It grants benefits to those who have no evidence of disability as a result of the very disease covered by the Act.

That this has led to the payment of benefits to claimants who can produce little or no evidence of disability from pneumoconiosis is now clear beyond argument from the GAO testimony presented on July 27, 1981 to this Committee. According to the GAO, in 172 of the 205 approved claims examined by the GAO, there was inadequate medical evidence of disability or death from black lung. Sixteen of these claims were approved under statutory presumptions. (GAO Testimony, p. 6)

Furthermore, the notion that presumptions are somehow necessary because black lung cannot be diagnosed accurately cannot be supported. Morton Henig from the GAO testified at the July 27 hearings held by this Committee: "Based on our discussions with pulmonary and respiratory specialists black lung can be diagnosed and disability determined with a high degree of accuracy and reliability." (GAO Testimony, p. 8). Further, in Separate Views to the House Report on the 1977 amendments cited above, Dr. Howard S. Van Ordstrom, a past President of the American College of Chest Physicians, is quoted stating; "We do have medically established clear cut ways of determining both diagnosis as well as disability with reference to coal workers' pneumoconiosis, as well as all of the other currently known fibrogenic dust diseases of the lungs." (Legislative History, p. 601)

Whatever may have been the problem with obtaining medical evidence in the 60's, they no longer obtain, given the rapid progress of medical knowledge of the disease, the heightened public awareness of its existence, and the accompanying increase in the availability of medical facilities in coal regions capable of diagnosing the disease. Clearly there is no reason to extend to coal miners special evidentiary provisions unless it is desired that all miners or their survivors receive benefits which often duplicate other benefits whether they are disabled from black lung disease or not.

(b) Definition of pneumoconiosis

The definition of pneumoconiosis was expanded in 1977 to include the ". . . sequalae, including respiratory and pulmonary impairments arising out of coal mine employment." The definition could encompass a variety of diseases with little relationship to coal mine employment and little medical support for inclusion in the black lung program. This expansive definition of pneumoconiosis illustrates the political nature of the eligibility requirements which have become the basis for payment of benefits under this Act. This section has become the basis for inclusion of several diseases which either have no causal connection to coal mine exposure such as lung cancer, or have no disabling effect such as anthracosis. As Dr. Miller of NIOSH pointed out in his testimony to this Committee, there is no evidence of an increased incidence of lung cancer among coal miners. (NIOSH Testimony, p. 3).

(c) Use of affidavit evidence

Under the black lung statute, affidavits from lay persons commenting on the health of the individual may actually trigger the use of presumptions of death or disability from pneumoconiosis. Specifically the presumption for miners who had 25 or more years in the mines before June 30, 1971 may be triggered by affidavits including affidavits from potential recipients of benefits. Affidavits may also be used in the application of the 15 year presumption although the Benefits Review Board has indicated that some medical evidence must be present to support an award. This is not the sort of objective evidence that insures fair but hardheaded consideration of the merits of a claim, and is yet another example of the way this law was structured to guarantee the payment of benefits whether or not the recipients meet normal standards for establishing the existence of the condition that is the reason for the law.

(d) Prohibition on rereading X-rays

In the 1977 amendments the Department of Labor was barred from rereading x-rays if they were originally read by a Board-certified or Board-eligible radiologist and if they were of good quality. The prohibition was justified on the grounds that too many claims were being denied on the basis of the rereading of the x-rays by government experts and that x-rays were being given excessive weight in the consideration of black lung claims.[2] This extraordinary prohibition was characterized by Senator Chafee as "an open door to the Treasury." (Legislative History, p. 1035) Claims experience has supported his fear. That provision bars the government from examining a major portion of the evidence in a claim. The provision does not deal with the weight to be accorded x-ray evidence; rather it prevents the government from reviewing at all a critical portion of the evidence. There is no reason that an administrative law judge cannot weigh competing x-ray evidence just as any judge must weigh other evidence. That is the normal method of handling such claims in any responsible system. Why is an exception made here unless, what we really want to do is insure that almost every claimant remotely connected with the mines is eligible to receive another check?

(e) Definition of disability

Congress wrote into the black lung statute a special definition of disability. According to the statute a miner is considered disabled when the pneumoconiosis prevents him or her from "engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time." (Section 402(f)). Furthermore, the survivors of a deceased miner are not to be denied benefits because the miner was still working at the time of his death. The definition of disability in the black lung statute is completely at odds with the definition of disability in comparable programs such as the social security disability program. Under that program disability is defined as "the inability to do any substantial gainful activity be reason of any medically determinable physical or mental impairment." The Social Security regulations state that ". . . meet this definition you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy." (20 CFR 404.1505 (a)). The focus in this definition is inability to do any kind of work. The definition of disability under the black lung statute considers only the miner's ability to do the job he had previously done; not only his ability to do other work, including other work at the mine.

(f) Definition of coal miner

In the 1977 amendments, the definition of a coal miner was extended to include individuals who work "around a coal mine or coal preparation facility" and individuals involved in coal mine construction or transportation in and around a coal mine. This automatically extends coverage to individuals who work above ground, and who have little exposure to coal dust and show little history of disabling pneumoconiosis. In one actual case, an employee of a railroad company which hauls coal from a mine to a preparation plant was deemed to be a coal miner for the purpose of this program. In another case a supply clerk who checked in supplies arriving by truck at the supply room of a mine and who had been underground only for one two-week period in thirty-five years of employment was determined, for purposes of his claim, to be a coal miner.

(g) Automatic survivors benefits

The black lung statute provides benefits to surviving spouses as well as surviving dependent children, brothers, sisters, and parents without proof that the miner died from pneumoconiosis. This unusual provision further demonstrates that this program is not a disability program or even a worker's compensation program but a pension program with full survivor benefits. The miner's death could be from any cause, yet this provision permits the survivors of the miner to collect benefits.

Furthermore under a presumption applicable to miners who had 25 years or more in the mines before June 30, 1971 and who died before March 1, 1978, survivors may receive benefits even if the miner did not die of pneumoconiosis if it cannot be proved (negatively) that the miner was not partially or totally disabled from pneumoconiosis at the time of the miner's death. For example, in one case which came under the 25 year presumption, the survivors of a coal miner who was actively employed at the time of his death, who had no evidence of pneumoconiosis and who was killed by an automobile, successfully claimed death benefits. The GAO testimony included other cases in which the claims of survivors were paid even though the miners involved died of diseases other than pneumoconiosis or even related ailments.

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[2] Senate Committee on Human Resources, Rept. 95-209 to accompany S. 1538, May 16, 1977. Reprinted in Legislative History 604, 613. See also Remarks of Sen. Randolph reprinted in Legislative History at pp. 1039-41.

(h) Failure to make trust fund a party

Claims which are not payable by a responsible operator are paid by the Black Lung Benefits Trust Fund. Yet, incredibly, the Trust Fund is excluded as a party to those cases and thus has no right to contest the claims it must ultimately pay. And since there is no employer to contest the claims the initial determination if favorable to the claimants is not again reviewed. Denying the Fund the right to protect its assets from the decisions of the program administrators, given the track record of these administrators as illustrated by the testimony of the GAO, clearly leaves the Fund open to continued waste of its assets.

(i) Payment of retroactive benefits

Under current practice once an initial decision is made to award benefits, all benefits are immediately payable including benefits from the date of application. In the event of reversal it has proved extremely difficult to reclaim these amounts. Given the fact that coal operators (as opposed to the Trust Fund) have experienced a significant reversal rate (approximately 40 percent) despite the lax standards in the law, it appears foolish to pay benefits until a case is final.

THE BLACK LUNG PROGRAM HAS BECOME AN UNNECESSARY SUPPLEMENTAL PENSION PROGRAM FOR MINERS

The federal black lung program has grown into a full-fledged pension program stacked on top of social security pension and the employee's regular pension, but without the normal administrative eligibility requirements.

The coal industry and coal consumers should not be required to waste scarce capital on permissively drawn and extravagantly administered benefit entitlements, much less expand their funding. Surely it is possible to provide responsible and even generous help to true victims of black lung without commingling them in a claims system which virtually guarantees abuse. The Black Lung Act was conceived and passed to correct a genuine and legitimate problem, but its original purpose has been swamped. The Black Lung Act in its present form holds its political and union supporters hostage to the fear of political backlash from non-disabled claimants if the abuses are corrected. Those corrections, however, must be made.

The politically expedient alternative is to temporize by financing the ongoing abuse with increased taxes. That approach may have its own backlash. Tax monies originally and properly targeted at genuine human needs lose their financial effectiveness and broad public support when they are distributed to those not in genuine need, on an 8-to-1 basis.

We urge the Subcommittee to correct the abuses in the Black Lung Act before determining what additional tax support it will charge to energy consumers to support the growing ranks of beneficiaries.

Mr. RANGEL. Thank you. Mr. Keating.

STATEMENT OF DWIGHT KEATING, VICE PRESIDENT, GRAFTON COAL CO., ON BEHALF OF THE MINING & RECLAMATION COUNCIL OF AMERICA

Mr. KEATING. Mr. Chairman, I am Dwight Keating, vice president of Grafton Coal Co., Clarksburg, W. Va. Last year Grafton Coal, a privately held company, surface mined approximately 600,000 tons of coal.

I am speaking today on behalf of the Mining & Reclamation Council of America (MARC). MARC is a national organization oriented toward the problems of surface mining, representing large, medium and small coal producers throughout the country. The council's producing members mined approximately 70 percent of our Nation's total coal output last year.

Mr. Chairman, we appreciate the opportunity to provide input for the subcommittee's analysis of the factors which have contributed to the present condition of the black lung disability trust fund—the fund—and its review of alternative proposals to the insolvency problem.

The original black lung program, enacted by Congress in 1969, sought to address a very real problem in the Nation's coal fields. Let's put this program in perspective to the committee. Last year black lung tax revenues were about $277 million, the funds advanced, $535 million, for a total outgo of about $800 million. This is in relationship to total pretax profits for the independent part of the coal industry and the Commerce Department has data of approximately $600 million. So this fund alone has an outflow bigger than the profits of this coal industry.

Let's see how this program affects the small operator, of which I am one. I am from West Virginia. Presently we have 10,000 workers unemployed. Another 5,000 or 6,000 workers have left the mining industry because there is no hope of employment in West Virginia. It is a highly competitive industry. The small producers basically sell on the spot market. The small producers who are selling in the metallurgical industry don't have the opportunity to pass on a cost increase willy-nilly, as though the consumer is going to pick it up.

If I sell my coal to United States Steel, they are going to buy the lowest priced coal possible. We compete in overseas markets in West Virginia. There the foreign purchaser wants the lowest priced product. So when you have a tax that, if it doubles to, from last year, about $300 million to approximately $600 million, you are equaling the profits of the independent coal industry, a very, very serious implication for keeping what I consider an independent producer like myself, an endangered species, still in business.

So what I would like this committee to do is, when they consider the revisions to the black lung tax, that they consider that the independent producer will not be around very much longer if we don't have the opportunity to reform the system.

Thank you.

[The prepared statement follows:]

STATEMENT OF DWIGHT KEATING, VICE PRESIDENT, GRAFTON COAL CO., ON BEHALF OF THE MINING AND RECLAMATION COUNCIL OF AMERICA

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The original black lung program, enacted by the Congress in 1969, sought to address a very real problem in the Nation's coal fields. A large number of miners were disabled by coal workers' pneumoconiosis (CWP) and, at that time, State worker's compensation programs did not recognize CWP as a compensable injury or illness. Rather than interjecting the Federal Government into State workers' compensation programs, the Congress established a Federal program, funded from general revenues, to provide benefits to miners disabled by CWP. If the miner was deceased or subsequently died, the surviving spouse and/or dependent children, parent, brothers or sisters, were eligible for benefits. These benefits were an add-on to any social security disability benefits received by the claimant.

Under this program, disability was medically determined and benefits were awarded to miners diagnosed to be suffering from complicated CWP which is broadly recognized as a progressive, totally disabling, disease.

Subsequently, in 1972 and 1978, the Congress significantly modified and expanded the 1969 act. Other witnesses today, and at the subcommittee's July 27 hearing, have outlined those changes. I do wish, however, to note the key eligibility modifications incorporated in the 1972 and 1978 amendments which contributed substantially to the current condition of the fund.

1. The definition of CWP was expanded to include virtually any respiratory or pulmonary disease.

2. The definition of miner [1] was expanded to include anyone who has exposure to coal in their workplace irrespective of the level of exposure to coal dust—the cause of CWP.

3. The fund was charged with paying benefits to a class of claimants without being given the authority or resources to adequately review a claim.

These three changes, when coupled with the presumptions [2] based on years of employment also incorporated into the law in the 1972 and 1978 amendments, have made it possible for claimants to establish entitlement to benefits under the program who are not, in the case of deceased miners, were not disabled by CWP. In its testimony on July 27, the General Accounting Office recounted just a few examples of the thousands of claims being paid by the fund for which there was no medical evidence of CWP or disability. As a consequence, the fund is presently faced with deficit of $1.5 billion.

An appealing and simple solution to the problem would be to project the deficit of the fund, pick a year in which solvency would be desirable, and then calculate the necessary black lung tax increase to fulfuill that objective. Proponents of such a solution will argue that the coal companies can simply pass this cost along to their customers. This line of reasoning is dangerous. It ignores the realities of the competitive market for coal.

In the domestic coal market, a large percentage of sales by smaller producers is made in the highly competitive spot market where the contract is awarded to the low bidder. While competitive bidding is also the norm for long-term contracts, unanticipated cost increases can be provided for in the final contract.

Many new utility contracts provide for passing through increased taxes; however, many older contracts do not. It should also be noted that in the expanding overseas market for coal, both steam and metalurgical, contracts generally do not provide for a passthrough of increased taxes. Insistence on such a provision often precludes a producer from consideration by prospective buyers.

Although the black lung tax is not the sole contributing factor, the tax and the cost of maintaining the black lung insurance required under the act—self-insurance is not a viable option for small- and medium-sized producers—is in great part responsible for the marker decline in the number of small and medium size coal companies since July 1, 1973, the effective date of the responsible operator provisions of the Black Lung Benefits Act.

While the ability to pay the tax should not be determinative, the committee should be aware that the estimated before tax income of the Nation's independent coal producers for 1980 was $600 million. This Department of Commerce figure should be viewed in comparison with the estimated revenues of a $1.00/.50 tax, which is 597 million. Obviously, any tax increase will have a significant impact.

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[1] Section 3 of the Black Lung Benefits Act of 1972 struck out the word "underground" in §§ 401, 411(c) (1) and 2, and 422(a) of the statute. The decision to extend the black lung program to surface miners was made even though the congressional hearing revealed no evidence that the incidence of pneumoconiosis was significant among surface miners.

It is widely understood that exposure to quantities of coal dust is the direct cause of pneumoconiosis. In "Respiratory Status of Surface Coal Miners in the U.S." published in September 1977 in the Archives of Environmental Health, 1,438 surface miners were studied using ventilatory capacity tests and roentgenograms together with a respiratory sysmptom questionnaire. The results of these studies indicated that only 4 percent (59) of the workers had any evidence of pneumoconiosis. Only 7 individuals had evidence of category 2 pneumoconiosis or greater (.47 percent).

Even this small percentage was biased, however, since most of the workers surveyed had worked for prolonged periods in underground mines. Indeed, of the 7 who had evidence of category 2 CWP or greater, only 2 men had not had extensive underground exposure; one of those had pulmonary tuberculosis, the other had worked extensively in a coal preparation plant where the dust exposure levels are quite high. Of 1,171 miners who had never worked underground or had only minimal underground experience, only 2.5 percent showed roentgenographic evidence of CWP.

[2] Four of the five presumptions in the law are based upon years of coal mining employment irrespective of whether the employment was in underground or surface mining. The 15-year rebuttable presumption of total disability if the miner has medical evidence of pneumoconiosis is applicable only to years of underground coal mining employment.

In considering the alternatives for addressing the fund's deficit, the submcommittee may wish to consider a more equitable approach which would not disportionately impact smaller operations. This approach would make all fund cases payable from the general revenues. The cost of this part of the program would thus be spread, as is the case with social security disability and all black lung claims approved from the act's enactment to July 1, 1973, throughout the tax base of the Federal Government. Operators would remain liable for benefits and medical payments in claims where they are responsible under the law, while all claims in which no operator can be identified would be paid out of general revenues.

The fund's deficit is not a problem created by the coal industry. It arose because the Congress expanded the program from the original goal of providing compensation to persons disabled by CWP into an income maintenance program for over a half million persons. Fairness would dictate that the cost of solving this problem be allocated to all taxpayers.

A separate alternative would be to integrate black lung benefit payments with the social security disability program and State and other worker compensation programs through the general application of offsets that are presently only applicable to certain black lung claims to all claims. For example, a claimant's black lung benefits could be offset by the amount of any benefits the claimant is receiving through the social security disability program, a State worker's compensation program, or other related programs. The decrease in the amount of benefit payments required from the fund, and thereby the projected deficit of the fund, would, no doubt, be reduced substantially.

In presenting options to the subcommittee for addressing the fund's deficit, we do not seek to ignore our responsibility for providing compensation to employees who are, or become, disabled by CWP. We do, however, consider it imperative that substantive changes be made in the act to assure that only individuals truly disabled by CWP are able to receive compensation.

An issue of particular concern to MARC is that, although the possibility of a worker at a surface mine contracting CWP is extremely slight, a claimant is able to utilize the act's presumptions, based upon years of coal mine employment, to qualify for benefits. This concern is exacerbated by the provisions of the act which permit a claim to be awarded on the basis of an uncorroborated affidavit by a person with a direct pecuniary interest in the claim. Thus, in the case of a deceased miner, a claimant may be awarded benefits without any medical evidence of disability even though the likelihood of a surface miner having had CWP is practically nonexistent. Fraud is invited by this provision which, to our knowledge, is unique in our legal system.

Although not contributing factors in the fund's deficit, the Black Lung Act's provisions for identifying responsible operators and the collection of that liability has caused what would appear to be unintended results. For example, because responsible operator liability is determined by the miner's last year of coal mine employment, companies operating will not hire any applicant with prior coal mine employment, especially middle-age and older workers, for fear they may be the last employer and deemed the responsible operator should the applicant subsequently file a claim for black lung benefits. In essence, hiring a previously employed miner risks incurring a $175,000 liability.

An ancillary problem, especially for the smaller, privately owned or closely held coal companies, is the provision of the black lung laws permitting the Department of Labor to go beyond the company to the owners and directors of a company to assign liability for a black lung claim. Because any present or previous employee is a potential $175,000 liability, obtaining financing through normal means or raising funds in the equity market becomes a difficult task. The intent of State laws to provide for the distribution of the deceased assets at death are frustrated by these provisions which, in essence, create a contingent liability for the lives of an employee and that employee's dependent survivors. Probate proceedings are carried forward for years.

Mr. Chairman, although your committee's jurisdiction over the black lung program is limited, the committee must, in its assessment of the current and future status of the fund, face a fundamental issue. The black lung program has become an income maintenance program, tantamount to a Federal pension plan, for the workers, and their spouses and dependents, of one industry. Would not a more reasoned national policy be to return to the original intent of the program and provide a program to compensate workers disabled in the course of their employment? This question must be addressed prior to and/or in conjunction with any proposals to increase the black lung tax.

For the reasons outlined above, Mr. Chairman, MARC opposes consideration of a tax increase in the absence of a comprehensive review and reform of the black lung program's eligibility criteria and administrative provisions.

At such time, MARC would appreciate the opportunity to present its views before this committee on any legislative proposals to change the existing tax.

Chairman RANGEL. Mr. Duncan.

Mr. DUNCAN. Thank you.

I don't have any questions, other than to thank the panel. It is a good panel.

I think all of us are interested in the same goal. I think perhaps we have different roads to travel. I think everyone had indicated that today. I do thank you. I know your testimony will be helpful to resolve this complex question.

Chairman RANGEL. Thank you.

Most of the testimony has centered around reforms which, of course, this committee does not have jurisdiction over, but we will still keep the record open and welcome your suggestions as they relate to the taxes and the impact you believe it would have on your particular interest.

I assume that the National Association of Manufacturers would be asking that the Federal part of the program be discontinued in 1983.

Mr. GUY. That is our position. We think State laws adequately cover occupational disease at this time, and if concerns of Congress in 1969 and 1972 and in 1977 are no longer valid, it would be wise to return the program to the States.

Chairman RANGEL. I assume that would be a consensus with the panelists, that there would no longer be a need for Federal concern, and local and State governments are closer to the problem and could resolve it.

Mr. CONLON. Yes, sir.

Mr. STENMARK. Yes.

Chairman RANGEL. Have you been able to share your ideas with the administration?

Mr. GUY. We have had several meetings with administrative people. Nothing has been resolved. I think Mr. Church reflected on that this morning. The dialog is there. The line of communication is open. However nothing has been resolved.

Chairman RANGEL. But you met with the Department of Labor?

Mr. GUY. Yes, sir.

Chairman RANGEL. You did feel that there was some movement aboard for resolution taking into consideration the position taken by all the parties?

Mr. GUY. I think there is some hope for resolving it. I am not overly optimistic that it can be done but there is some room there.

Chairman RANGEL. Did you get the impression that they intended to share their solutions with the Congress?

Mr. GUY. That was my impression.

Chairman RANGEL. We thank you and I have a series of questions but it is senseless asking us these questions when you haven't the slightest idea of when the administration is going to come forward with their recommendations. But again, while all of your testimony is weighted as it relates to reforms as you see it, this committee is very concerned with the tax structure and your recommendations as to how we can deal with that. I will allow the record to remain open so that you might want to reflect on that further. I really appreciate the effort that you have made individually and collectively to come before the committee. Thank you.

Our last panel is Black Lung Association of Harlan County, Ky., Andy Vandergaw, counsel; Dr. J. D. Miller, from Clover Fork Clinic; West Virginia Wives and Widows Association, Helen Powell, president, accompanied by Laura Bowers, counsel; and Kentucky Miners Health Care, Nick Frasure, member, board of directors.

STATEMENT OF ANDY VANDERGAW, HARLAN COUNTY (KY.) BLACK LUNG ASSOCIATION

Mr. VANDERGAW. It gives me great pleasure to appear here today. I appear on behalf of the Harlan County, Ky., Black Lung Association. I am an attorney located in Harlan County and I am here today to tell you what I see in Harlan County, Ky. and how this law and the proposed changes may or may not come down to affect the people in Harlan County, Ky.

Harlan County is in the heart of the largest coal producing area in the United States. It has no other industry. If you don't work in the coal mines you work in a support facility to those mines and there is no other industry that provides a basis for income into families.

If the coal industry dies there, Harlan County dies. No one in Harlan County wants the coal industry to die or to suffer economic loss.

What I have heard today is—we don't live in the middle of a mountanous area but we come from a different country because the laws I have heard described here today are not the ones that apply to my client. My clients don't get automatic promotions. After they worked so many years in the coal field they get black lung as a pension. My clients don't get that. My clients get a presumption that if they have pneumoconiosis and it is disabling and they have *X* number of years in the mines, that it is related to and connected to the work in that mine.

That is all my clients get. I have heard talk about X-rays today. I have not experienced that recently, and all I can relate to you being a small town country lawyer is what happens to my clients. We had a doctor in our area who was in private practice. When a black lung client came to me I would send the X-rays to him and he would read them and send his results to the Department of Labor. After he had done that for a number of years he got a contract from an insurance company to do their re-reading and their original readings of X-rays. He re-read many of the X-rays and most of these he did not realize that he had read for private practitioner lawyers who had submitted them.

He re-read those for the insurance company and he came up with exact opposite results. So I would submit that in explanation of that he said interpreting X-rays has quite a bit of subjective interpretative requirements. I would submit that there is a lot of conflict in many cases where one reader has read positive for pneumoconiosis and one reader has read negative for pneumoconiosis.

I have one suggestion I don't think has been raised. This is a specific suggestion. I think the controversial rate of claims by coal and insurance companies would be dramatically changed if the coal companies and the insurance companies had to pay back to the fund money at the interest rate that the fund had to borrow at.

It was not economically advantageous for them to fight every single case that comes up.

Chairman **Rangel**. Thank you.

Dr. Miller, are you a physician?

STATEMENT OF J. D. MILLER, M.D., CLOVER FORK CLINIC, HARLAN COUNTY, KY.

Dr. **Miller**. Yes; I am from Harlan County also.

Chairman Rangel and Congressman Duncan, thank you for the opportunity to speak before you today. I am a board certified internist, practicing in a community health center in one of the largest coal-producing counties in Appalachia. For the 8 years that I have been in Harlan County, Ky., I have treated many miners suffering from coal workers' pneumoconiosis.

They have become my friends. I have learned first-hand of their disability and suffering. I have sat with them as they slowly smothered to death. After all of modern medicine has been expended, I have watched them die.

It is from this personal knowledge that I speak. My experience is not that of having examined large numbers of claimants of this disabling disease, but that of knowing and treating persons already known to be afflicted with coal workers' pneumoconiosis.

Now we are facing the problem of insolvency of the Black Lung Disability Trust Fund. There are those who seem to be suggesting that we can make the problem go away by ignoring it. They suggest that all but the most severe forms of coal workers' pneumoconiosis are not truly disabling—in spite of documented disabling levels of hypoxia seen on arterial blood gas studies or documented disabling pulmonary function.

Some people suggest that cigarette smoking is the true cause of miner's respiratory disability. While I agree that cigarette smoking contributes to the respiratory disease of some miners who smoke, I do not agree that pneumoconiosis is not also a factor in many of these miners.

A random sampling of 58 of our clinic's patients who have coal workers' pneumoconiosis revealed that 9 percent never smoked and an additional 9 percent smoked three or less years. This represents a substantial group of people who receive black lung disability in whom cigarette smoking could have had no significant effect, a finding also consistent with my subjective impression that there is much more respiratory disease and disability in Harlan County than in Cleveland, Ohio, where I trained for 3 years.

There are others who suggest that disability should not be given for black lung because the recipients use it for retirement, as if to suggest that suffering doesn't count if you are over 65.

Finally, there are those who suggest a more stringent pathologic (or tissue) diagnosis, although coal workers' pneumoconiosis is first of all, a functional disease.

Yet the issue is how to deal with insolvency of the Black Lung Disability Trust Fund. I believe costs can legitimately be contained only through one means: That is to decrease the numbers of new people who, because of their exposure to coal dust, contract this disease each year.

Coal workers' pneumoconiosis is a preventable disease. Adequate mine ventilation and the use of measures to diminish the production of dust such as wet drilling, infusion of water into the coal seams, or hydraulic coal extraction, can decrease the numbers of new people developing black lung.

Periodic screening to detect early disease and remove the miner from heavy dust exposure, can help to limit the severity of the disease. This provides the only legitimate means to cost containment. If fewer people have the disease, the costs of compensation will be less.

The problem is real. Real people are suffering. They are asking for a justice that they should not have to ask for. We cannot make their suffering go away by ignoring them. However, if appropriate measures are taken to prevent the disease in new people, costs can be contained.

Thank you.

Chairman **Rangel**. Thank you.

Mr. Frasure.

STATEMENT OF NICK FRASURE, MEMBER, BOARD OF DIRECTORS, KENTUCKY MINERS HEALTH CARE

Mr. **Frasure**. Congressman Rangel. I had not planned on testifying but I would like to make a statement and say who I am.

I am from Harlan County. I worked with the National Black Lung since 1969 when the first piece of Federal legisiation was written that would compensate workers for occupational disease.

We have always as the National Black Lung Association testified on dust control standards—we have always been concerned in black lung prevention. I work in Kentucky Miners Health Care which is very concerned with prevention. We contract with providers to do outreach in transportation and education. We realize we are here today to make the fund solvent or to testify or to do whatever we can to work with this committee to see that the fund is solvent.

I, too, see people every day in the field at the hollows and creeks that are suffering and dying from black lung disease. So, I would hope this committee would take seriously making the fund solvent using whatever influence you have or however we can influence the committee here today or help the committee.

Thank you.

Chairman **Rangel**. I assume that Ms. Helen Powell is not with us this afternoon.

Mr. **Frasure**. I think she is not.

Chairman **Rangel**. That concludes the testimony for this panel. Mr. Duncan.

Mr. **Duncan**. Thank you, Mr. Chairman.

I have no questions. But I thank the panel for your contribution.

Chairman **Rangel**. Doctor, your testimony was rather dramatic. Did you mean literally you have had your patients dying of black lung since you have been practicing medicine in the community?

Dr. **Miller**. That is correct. I have literally watched people smother to death over periods of time as long as one year or longer.

Chairman **Rangel**. How long have you been with the Community Health Center?

Dr. **Miller**. Eight years.

Chairman **Rangel**. Could you roughly determine how many people, clients or people you have heard of die from this disease that you have come into contact with? Just to get some idea.

Dr. **Miller**. Probably a couple dozen.

Chairman **Rangel**. That you were treating?

Dr. **Miller**. That I was treating, yes.

Chairman **Rangel**. There are some people as you think the State government could handle this. Do any of you share in that belief?

Mr. **Vandergaw**. Mr. Chairman, in the State of Kentucky the next legislature will have a bill to curtail workmens' compensation program in the State of Kentucky because it is at a loss for where it is going to get the money to pay the current compensation programs that go on. They cannot create and function within that program to accept this program into the State and make it function. There is just no way.

Chairman **Rangel**. I can tell; you know that this committee does not have jurisdiction that relates to the standards. We only have jurisdiction as it relates to the solvency of the trust fund and clearly the easiest thing to do is to point out where certain people perhaps should not receive benefits who are receiving benefits. But it would seem to me, in view of the political thrust of eliminating Federal programs, that the doctor ought to get together with the people that are similarly situated and try to impress on the appropriate committee the need for making certain that the guidelines we have are either honed or sharpened up so that you would know that those who need benefits receive them.

You might also send to me whatever evidence you see out there as it relates to prevention. I note that most of you would rather be without the problem of the disease than be begging for benefits after having acquired it.

Maybe we can do something in Congress in that area. Thank you.

[The following was subsequently received:]

[Memorandum]

Evarts, Ky., *October 8, 1981.*

To: John J. Salmon, Chief Counsel, Committee on Ways and Means.
From: J. D. Miller, M.D., Clover Fork Clinic.
Subject: Additional information requested in the September 28, 1981 hearings by the Subcommittee on Oversight of the Committee on Ways and Means relative to alternate solutions to insolvency of the Black Lung Disability Trust Fund.

I will attempt herein to address further, issues relative to prevention of Black Lung Disease.

At the September 28, 1981 hearings there was some discussion of obtaining periodic chest x-ray's as a screening technique so that miners could be transferred to less dusty areas at the earliest evidence of disease. There is in fact a program in place for doing this, referred to as the Part 90 Program of the Mine Safety and Health Administration and also referred to as the Miner's Option to Transfer Program of the National Institute of Occupational Safety and Health. This program provides for chest x-ray's to be obtained every 3 to 5 years and guarantees wage retention and shift retention. I believe that it is an excellent program and simply needs to be promoted much more heavily. This could have a significant impact in cutting down on the frequency and severity of Black Lung Disease and as such could ultimately decrease the cost of Black Lung Disability payments.

There also are provisions in the law for monitoring of dust levels. Significant questions have been raised regarding the validity of this monitoring relative to the care or lack of care taken when the samples are collected. It is my opinion that more care in monitoring of dust levels is necessary and that enforcement of current standards must be given a high priority. Mine ventilation and use of wet drilling are measures that can be used to decrease the amount of dust to acceptable levels. Perhaps the dust monitor device needs to be placed at a more strategic location in the mine rather than on a miner who may be given motivation to not carry it.

The Mine Safety and Health Administration has established sound policies regarding the prevention of Black Lung Disease. These policies need to be enforced and when the budget for the Mine Safety and Health Administration is reviewed by your committee I would encourage you to keep this budget strong.

Chairman RANGEL. Next, on behalf of Action on Smoking and Health, John Banzhaf.

Ms. MUELLER. In Mr. Banzhaf's absence I would ask permission to read his testimony. My name is Athena Mueller and I am a staff counsel of Action on Smoking and Health of which John Banzhaf is the executive director and chief counsel.

Chairman RANGEL. We have copies of that testimony.

STATEMENT OF JOHN F. BANZHAF AS PRESENTED BY ATHENA MUELLER, STAFF COUNSEL, ACTION ON SMOKING AND HEALTH

Ms. MUELLER. I am grateful for the opportunity to testify briefly before you today to suggest two possible approaches for dealing with the problem of the insolvency of the Black Lung Trust Fund.

The first proposes an alternative source of funding which would not only substantially increase the resources of the fund without placing a further burden on the coal mining industry, but would also provide a fairer and more equitable distribution of the financial burdens of black lung based upon the best available evidence as to its causes.

The other suggestion would dramatically reduce—both in the short term and in the long term—not only the costs of compensating for black lung problems but also the totally unnecessary and tragic human suffering now caused by the diseases.

By way of introduction, my name is John F. Banzhaf III. I am executive director and chief counsel of Action on Smoking and Health (ASH); a national, nonprofit, tax-exempt organization concerned with the problems of smoking. I am also a professor of law at the National Law Center of the George Washington University.

The underlying premise of my two proposals is a simple one, a medical fact which has been increasingly documented and recognized in recent years. It is that the cluster of conditions known generally as black lung disease for which compensation is provided is not caused solely—or in some cases even primarily—by exposure to coal dust.

Instead, a major and perhaps even predominant cause of these conditions is exposure to another equally dangerous contaminant; tobacco smoke, including both particles and dangerous gases.

The major role that exposure to tobacco smoke plays in causing the conditions compensated by the black lung program is well documented in the medical literature and has been acknowledged by many major authorities.

For example, the 1979 Surgeon General's report to Congress on smoking States: Coal dust and cigarette smoking appear to act in an additive fashion to produce obstructure airway disease.

It goes on to note only miners who have smoked are likely to suffer from debilitating lung problems.

The prestigious Journal of the American Medical Association concluded in a recent editoral that:

> Disability, even when it exists, is rarely caused by coal particles alone but is usually the result of other factors such as cigarette smoking, which results in emphysema * * * of all those eligible for compensation however, only those who have smoked cigarettes, as well as mined coal, will qualify when subjected to rigorous pulmonary function testing.

An article in the same prestigious journal entitled, "Respiratory Disease in Coal Miners" concludes:

> The evidence indicates that cigarette smoking has between five and ten times the effect that coal dust has on ventilatory capacity * * * more than 80 percent of the respiratory disability seen in coal miners is related to cigarette smoking.

As Dr. Miller, Director of the National Institute for Occupational Safety and Health, told this subcommittee only 2 months ago:

> Two important causes, or risk factors, have been found to be responsible for this chronic obstructive lung disease: coal mine dust and cigarette smoking. Cigarette smoking and other factors contribute significantly to these entities. Therefore a significant proportion of miners, especially those who smoke will continue to be affected by chronic obstructive lung disease—even at low dust levels. Chronic airway obstructure attributable to coal mine dust should also decrease, but will remain an important public health problem among coal miners unless cigarette smoking is significantly reduced.

Thus, the tobacco industry, not the coal mining industry, is responsible for a significant if not a predominant portion of those conditions known as black lung, particularly those cases which are compensated under the program because they lead to disability or premature death.

Yet, under the current programs only the coal mining industry, and not the tobacco industry, is required to contribute toward the compensation of black lung claims. This to us seems to be not only unfair and unreasonable, but to also have other undesirable consequences.

First, it distorts and interferes with the operation of the free market system by artificially raising the cost of one product—coal—by forcing it to bear expenses not associated with it, while keeping the cost of another product (cigarettes) unfairly low by not requiring it to bear the costs associated with its use. This is particularly important in this instance because it also interferes with our national policy of energy conservation by making the cost of a domestic energy resource unnecessarily high in comparison with competing—often foreign—energy sources, and discouraging thereby the use and conversion to coal. It also tends to encourage—through an artificially low price—the consumption of a product branded Public Health Enemy No. 1; a product whose use has been estimated to cost the American public—including the Government—over $50 billion a year.

The present system is also unfair because it forces the damages caused by a product used by only a minority of the population—approximately 35 percent of adult Americans smoke—to be borne by the entire population, either through increased taxes to support the black lung program, or through increased costs for products and services which use coal such as electric power, steel, et cetera.

This is particularly ironic because the cigarette industry, in addition to being one of the least socially desirable, is also a very rich industry able to spend billions each year promoting to both adults and children a very dangerous habit, and one which has not had a tax increase for some 30 years.

For these reasons ASH respectfully suggests that the present program be modified to require contributions by the tobacco industry in an amount consistent with and based upon the proportion of compensible black lung damage which is attributed to the use of their product.

This would provide a major new source of income for the now insolvent fund and prevent one of three undesirable consequences from occurring: (1) Forcing the Federal taxpayer to continue to shoulder the costs created by the tobacco industry; (2) failing to adequately compensate the miners who have suffered a serious health impairment; or (3) further unfairly burdening the coal industry and distorting the free market system upon which we appear to be pinning our hopes for resolution of the energy crisis.

The medical evidence previously referred to also indicates rather clearly that one cannot make a significant decrease in the black lung problem without attacking the other root cause: smoking.

Thus, even the reduction of coal dust to very low levels may have little impact if a large percentage of miners—some estimates are over 50 percent—continue to smoke. Therefore, ASH would also suggest that consideration be given to providing financial incentives to coal mine companies to reduce the incidence of smoking among their miners in at least two ways.

First, it would seem reasonable to provide incentives for companies to attempt to educate their workers as to the special additional dangers smoking poses for persons exposed to coal dust. Such efforts—which may be in the form of lectures, films, posters, and so forth—may induce workers who were not aware of the dangers smoking posed to their health to quit on their own. However, also recognizing the great difficulty many people have in breaking this habit, and the success that many programs have in helping people to quit, it would be advantageous to also provide financial incentives to the company for efforts to help their miners quit smoking.

These efforts might include sponsorship of stop-smoking programs either on the premises or in nearby towns, full or partial payment of the costs of such programs if undertaken voluntarily by the miner, or the offering of financial and other incentives to workers who kick the habit.

As you may know, such programs are becoming increasingly popular with many businesses even though their workers are not exposed to the added risks of smoking in conjunction with exposure to coal dust.

Since such programs would seem to more than pay for themselves in terms of reducing the costs of black lung disability and death payments, it would seem reasonable to consider such costs as an indirect payment into the fund. Therefore, ASH proposes that expenses incurred by coal companies to educate their workers as to the risks associated by smoking, and to assist those who smoke to quit, should be credited against the payments into the fund which would otherwise be due.

Finally, ASH would also suggest for the committee's consideration an increased financial incentive for companies to reduce the costs of the black lung program by favoring the hiring of nonsmoking miners. Such miners will be far less likely to be stricken by the black lung condition, and therefore less likely to be a drain on the fund in the future. Such a program would be similar to efforts already made by asbestos companies to hire only nonsmokers because their workers are similarly exposed to lung-damaging dust on the job.

One way to accomplish this goal would be to base the payment into the fund not only on the number of tons of coal but also on the proportion of smoking miners. Thus, companies with a lower-than-average percentage of smoking miners would pay less into the fund because their miners can be expected to need less compensation from the fund.

I thank you for your attention and welcome your questions and comments.

Chairman Rangel. Thank you. Mr. Duncan.

Mr. Duncan. I have no questions, but I do thank you for being here.

Chairman Rangel. How many offices do you have besides the one in Washington?

Ms. Mueller. We are actually a nonprofit trust and we are sustained only by contributions of sympathizers. We have only one office.

Chairman Rangel. How many on your staff?

Ms. Mueller. We have three attorneys and four other members on the staff and we operate to assist the nonsmokers. We also operate to help employees introduce nonsmoking schemes and when particular cases arrive in other parts of the country, we confer with attorneys in other States and give them the benefit of our expertise on smoking questions.

Chairman Rangel. Those contributions—are any of those coming from coal-related groups?

Ms. Mueller. Not so far as I am aware. Contributions are made up of about 50,000 contributors, small contributors, something in the order of $15 to $25. One or two are substantial people. We have a large number of people from the health professions, doctors.

But as far as I am aware, I don't know of any corporate contributors.

Chairman Rangel. We thank you for your testimony.

The committee will stand adjourned until such time as we find out when the administration will be available or until such time as the Chair of the full committee would want to move on the tax legislation.

[Whereupon, at 1:40 p.m., the hearing was adjourned.]

[The following was submitted for the record:]

Statement of Hon. Douglas Applegate, a Representative in Congress From the State of Ohio

Mr. Chairman and members of the Subcommittee on Oversight of the Committee on Ways and Means, I would like to take this opportunity to thank this subcommittee for holding such a vital hearing as this on the matter of the Black Lung

Disability Trust Fund. There is no doubt that changes must occur regarding the income and out go of the fund if it is ever to again be and remain actuarily and financially sound.

As Congressman from Ohio's 18th Congressional District, I represent that portion of eastern and southeastern Ohio in which the vast majority of the state's coal fields lie. Given the fact that Ohio ranks sixth in the nation in total production of coal and that most of the local and state economy depends on continued coal production, it is easy to see that I have many, many thousands of constituents who are or have been employed by coal mines and as a result have had to deal with Pneumoconiosis, or Black Lung, in a very significant number of cases. I would estimate that in the four and one-half years as Congressman, I have handled over 1,000 cases myself. This does not count those that have been handled by the local United Mine Workers office or private attorneys. Further there are over hundreds of people in my district currently receiving Black Lung benefits. It is because of these facts that my interest in this matter is so keen.

I am well aware, as you are, of the financial condition of the Black Lung Trust Fund and of the need to permanently correct the problems that have led to the massive deficit that it carries. However, if the overall program is to preserve its integrity, steps, in some cases drastic, will have to be taken and accepted.

While my remarks will be relatively brief, I believe it is most important to address the allegation of those groups who say that many people receiving benefits are doing so without adequate medical substantiation. No doubt, there may be cases where some recipients have had to prove much less than others. However, the overwhelming majority of recipients have had to go to great lengths to prove their condition and receive their rightful benefits. Further, more people are denied their benefits than those who are awarded it, thus my reluctance to believe these "investigations" of abusing the system.

Contrary to reports by such organizations as the U.S. Accounting Office, for which I have great respect, the Black Lung Program does not serve nor should be looked upon as a second pension to miners and/or their dependents. Rather, it is a compensation for a debilitating respiratory disease that affects, to some degree, most who enter our coal mines. And that degree ranges from continually coughing to the point of simply not being able to breath without the aid of therapy.

It would be unfair to those currently receiving benefits to reduce, in any way, the level of benefit payments not being received. I further believe that to reduce the level of payment to any future recipient is also a mistake and a definite step backward, and one that should not seriously be contemplated.

I would concur with those who advocate that every recipient who receives benefits must meet the established criteria. As much in favor of the program as I am, I do not favor benefits being received by those who do not qualify. However, I would take issue with those who favor a tightening or further restricting of the current criteria. That is not what is needed, but rather a better administered current program. This in itself could amount to substantial savings even if additional personnel were needed to review the many cases.

In addition to this administrative change, I favor an increase in the amount of excise tax paid by coal mine operators on each ton of coal mined. As to what that level would have to be to help achieve financial solvency, I cannot say. The current level of 25 cents for surface mined coal and 50 cents for deepmined coal is not enough. Equally, I would think that an increase to one dollar per ton of each type of coal mined, as proposed in the recent Budget Reconciliation bill by the House Education and Labor Committee but rejected by the Conference Report, is somewhat high. Further study needs to be done on this particular aspect of the program in the name of fairness to all operators. However, I do believe that some increase is necessary and should be considered as simply the cost of doing business in the coal industry.

Between the administrative changes and the call for increased excise taxes that I have outlined above, I believe a substantial amount of money can be saved which will put us on the road to solvency of the Trust Fund. These may not be the final answers, but I believe they could be the start of a renewed program without having to cut benefits to current and future recipients.

In closing, I would ask this subcommittee and the full Ways and Means Committee to fully explore every possible solution to this problem before drawing any conclusions and reporting legislation to the full House for its consideration. This is a good program which is essential to the welfare of thousands and thousands of people and which needs to be preserved.

Thank you again for this hearing and the opportunity to present this testimony.

STATEMENT OF THE AMERICAN BANKERS ASSOCIATION

The ABA is a national trade association whose members include 13,100 banks, more than 90 percent of the full service banks in the U.S. More than 4,000 of these banks are authorized to serve as fiduciaries.

Bank trust departments are well recognized for their long history of providing responsible fiduciary services to individuals and corporations, for employee benefit funds, foundations, charities and a number of other organizations. Several banks have expressed interest in making their fiduciary services available to Black Lung Benefit Trusts. Unfortunately, banks are effectively precluded under the regulations issued under the present law from serving these trusts.

The regulations prohibit the deposit of trust assets in either a demand or time account of the trustee bank. Further, the broad definition of trustee would prevent banks from serving even as custodian or agent for black lung trusts for the very same reason. The prohibition on depositing even the smallest amounts in the trustee bank interjects insuperable inefficiencies into the management of these trusts. By imposing this arbitrary prohibition on black lung trusts, the Internal Revenue Service chose to ignore its own precedent in the private foundation regulations which permit deposits in checking and savings accounts of the trustee bank. In the private foundation statute, the self-dealing provisions are virtually identical to those relating to black lung trusts. The Congress itself specifically considered the issue of self deposits when it enacted ERISA. Congress recognized the benefits which are provided to the trusts and exempted from the prohibitions bank trustee deposits. Consequently, bank trust departments are recognized as significant providers of valuable services to employee benefit funds.

The ABA urges the subcommittee to remove the impediment and to allow black lung trusts to consider bank management among the choices of fiduciaries. Permitting these trusts to utilize the demonstrated administrative abilities and fiduciary services of banks will provide for greater completition and the opportunity for more efficient management

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STATEMENT OF LAWRENCE KEBA, DIRECTOR, BROOK CONTRACTING CORP., HAZLETON, PA.

The following is a written statement in lieu of personal appearance at the Oversight Subcommittee Hearing of July, 1981.

My name is Lawrence Keba. I am a Director of Brook Contracting Corp. of Hazleton, Penna.

Brook Contracting Corp. is actively surface mining anthracite coal in northeast Pennsylvania.

Since July 10, 1978, we, as an anthracite surface mine operator, have attempted to present a problem with Section 48.4121-1(d) of the Federal Register relating to the Federal Excise Tax on Coal.

At this time, I will provide your Ways and Means Subcommittee the background on this problem.

Section 48.4121-1(d) provides that the excise tax shall be applied on the first sale of coal at either the f.o.b. mine or f.o.b. cleaning plant.

This section of the regulation fails to implement the legislative history of the Act in a consistent or reasonable manner. The legislative history provides that the excise tax shall be placed on coal. Under Section 4121-1(d), the tax is placed on the first sale of raw coal from a surface mine or the final sale of prepared coal from a cleaning plant.

The inconsistency of this Section 4121-1(d) develops when a private anthracite surface mine operator sells his raw surface mined coal to a private anthracite cleaning plant. Under these circumstances, the private surface mining operator becomes responsible for the excise tax on the weight of his raw coal. This raw surface mined coal consists of coal, rock, dirt, wood, and other matter. Therefore, the tax is applied on each ton of not only coal but also rock, dirt and wood.

Conversely, when a surface mine operator with a cleaning plant delivers his surface mined coal to his cleaning plant, the coal is not weighed or sold until his surface mined coal is run through his plant and all the rock, dirt and wood is separated from the coal. The coal is then sold to the customer and the excise tax is applied on the sale of clean 100 percent coal.

This problem exists in the anthracite area of Pennsylvania for a number of reasons:

1. Anthracite coal is geologically different from bituminous coal. Anthracite coal seams are on vertical pitches from 10 to 45 degrees. Bituminous coal seams are horizontal.

2. Because of this geological difference, the anthracite surface mine operator must remove the coal with dragline shovels. Because of this process, raw coal from an anthracite surface mine is always combined with rock and dirt that must be cleaned and removed before the coal can be used.

3. Many anthracite surface mine operators do not have cleaning plants. All of their surface mined coal must be sold to private cleaning plants.

4. Anthracite coal cannot be sold directly from a surface mine to a user.

Furthermore, because of Section 48.4121-1, a private preparation plant operator without a surface mine operation does not become liable for any excise tax. This is accomplished simply by not paying the private surface mine operator for the excise tax on his raw coal and not collecting any excise tax on his prepared coal. Because of this practice, a private preparation plant operator can have a distinct advantage in the market place.

Why does the preparation plant operator refuse to pay the surface mine operator excise tax on raw coal? Because, if he pays excise tax on raw coal, he will have to charge double the amount when the coal is prepared to recoup the amount he payed the surface mine operator. This being the case, the preparation plant operator is under no obligation to pay or collect any excise tax.

As a result of this process, the surface mine operator must pay the tax on the total weight of coal and rock directly out of his pocket.

Additionally, for your information, raw surface mined anthracite coal is about 55 percent coal and 45 percent rock and refuse.

As I mentioned earlier in this letter, we have been presenting this problem since 1978. First to the Internal Revenue Service. The Internal Revenue Service reviewed our appeal and took the position that our case has merit but we would have to seek a change in the Section of the Federal Register to allow the Internal Revenue Service to place the excise tax on the preparation plant.

With that directive, I pursued meetings with several Pennsylvania Congressmen and Senators. They heard my case and, in turn, sponsored House Bill #H.R. 7624 in June of 1980 (H.R. #7624 enclosed). This bill was included in a tax package presented to the Congress in December, 1980. This tax package was cut in January, 1981.

In a related development, on October 6, 1980, I received a final draft from the Internal Revenue Service Taxation and Accounting relating to excise tax on coal (text enclosed). According to this final draft, the tax under 4121 was to be imposed on the first sale of coal after the coal has been cleaned. This clarification was what we were asking for since 1978.

We proceeded to file the necessary forms to the Internal Revenue Service for return of our funds.

In February of 1981, the Internal Revenue Service called me to inform our company that we were right in filing for a refund under the October 6, 1980 final draft. However, they were still going to revert to the 48.4121-1 regulation as written.

This June, I again began the long and tedious job of having a new Bill introduced in the Congress to correct or amend Section 48.4121-1. I am pursuing this process because of the Internal Revenue Service recommendation. However, we feel that this amendment or clarification could be handled by an "in house" procedure.

Thank you for this opportunity to present this testimony.

11TH CONGRESSIONAL DISTRICT
OF PENNSYLVANIA

I

96TH CONGRESS
2D SESSION

H. R. 7624

To amend the Internal Revenue Code of 1954 to provide that the excise tax on the sale of coal shall be applied at the coal preparation plant instead of at the mine.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1980

Mr. LEDERER (for himself, Mr. MURPHY of Pennsylvania, and Mr. MUSTO) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1954 to provide that the excise tax on the sale of coal shall be applied at the coal preparation plant instead of at the mine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (e) of section 4221 of the Internal Revenue Code of 1954 (relating to certain tax-free sales) is amended by adding at the end thereof the following new paragraph:

"(7) UNCLEANED COAL.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, the tax imposed by section 4121 shall not apply to the sale of coal by the producer of such coal if—

"(i)(I) the purchaser is a coal preparation plant, or

"(II) the coal is for resale by the purchaser to a second purchaser which is a coal preparation plant,

"(ii) the coal preparation plant is located in the United States, and

"(iii) no process has been applied for the separation of the coal from waste material mined with the coal.

"(B) COAL PREPARATION PLANT DEFINED.—For purposes of this paragraph, the term 'coal preparation plant' means any person who performs any process with respect to the coal which is treated as mining under section 613(c)(4)(A).

"(C) PURCHASER TREATED AS PRODUCER.—For purposes of this chapter, any person to whom coal is sold or resold free of tax under this paragraph shall be treated as the producer of such coal."

(b) Paragraph (2) of section 6416(b) of such Code (relating to special cases in which tax payments considered overpayments) is amended—

(1) by striking out "(other than coal taxable under section 4121)" in the text preceding subparagraph (A),

(2) by striking out "or" at the end of subparagraph (M),

(3) by striking out the period at the end of subparagraph (N) and inserting in lieu thereof "; or",

(4) by inserting after subparagraph (N) the following new subparagraph:

"(O) in the case of coal which is taxable under section 4121 and to which no process has been applied for the separation of the coal from waste material mined with the coal, sold to any coal preparation plant (as defined in section 4221(e)(7)(B)).", and

(5) by adding at the end thereof the following new sentence: "In the case of coal taxable under section 4121, credit or refund shall be allowed or made only if subparagraph (O) applies."

(c) The amendments made by this Act shall apply to sales and uses after the date of the enactment of this Act.

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FINAL IRS REGULATIONS (T.D. 7726) RELATING TO EXCISE TAX ON COAL, FILED OCT. 6, 1980
(TEXT)

[4830-01]

[Final Draft of 6/19/80]

TITLE 26--INTERNAL REVENUE

CHAPTER I--INTERNAL REVENUE SERVICE,
DEPARTMENT OF THE TREASURY

SUBCHAPTER D--MISCELLANEOUS EXCISE TAXES

(T.D. 7726)

PART 48--MANUFACTURERS AND RETAILERS
EXCISE TAXES

Excise tax on coal

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the excise tax on coal. Changes to the applicable law were made by the Black Lung Benefits Revenue Act of 1977. The regulations provide the public with the guidance needed to comply with the Act and affect all producers who mine or reclaim coal in the United States.

DATE: The regulations are effective for coal sold or used by the producer in other than a mining process after March 31, 1978.

FOR FURTHER INFORMATION CONTACT: Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 27, 1979, the FEDERAL REGISTER published proposed amendments to the Excise Tax Regulations (26 CFR Part 48) under section 4121 of the Internal Revenue Code of 1954 (44 FR 50065). The amendments were proposed to conform the regulations to section 2 of the Black Lung Benefits Revenue Act of 1977 (Pub. L. 95-227; 92 Stat. 11). A public hearing was held on January 10, 1980. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

SUMMARY OF FINAL REGULATIONS

Under section 4121 of the Code, an excise tax is imposed on the sale or use of coal by the producer. The proposed regulation defined the term "producer" as the person who owns the coal immediately after extraction from the mine. One commentator disagreed with this approach and requested that the Treasury adopt a rule apportioning the excise tax between the royalty owner and the operator of the mine. The requested change has not been made regarding the definition of the term "producer" because the tax imposed under section 4121 is on the first sale of coal by the producer. However, the definition of the term "producer" has been expanded to include any person who extracts coal from coal waste refuse piles. Several examples have been added to illustrate the application of the definition of the term "producer."

Several comments were received criticizing the method used in determining the existence of lignite. The proposed regulation defined lignite in accordance with the standard specification for the classification of coals by rank of the American Society for Testing and Materials (Annual Book of ASTM Standards, Part 26, D 388.) The criticism was based on the high cost involved and the inaccurate results that may be obtained. Despite these criticisms the legislative history is clear that the ASTM classification is to be used. Therefore, the regulation has not been revised as it relates to the definition of lignite.

Paragraph (c) of § 48.4121-1 of the proposed regulations has been revised to clarify two other issues raised at both the public hearing and in the written comments. The first issue clarified is that silt waste is not subject to the excise tax on coal. The second issue is that in determining whether all or a portion of a particular mine contains lignite, all the facts and circumstances will be considered. For example, the Service will examine the contract price, contract specifications and will also determine whether lignite is commonly found in the area. Furthermore, to claim the exemption, the producer must maintain records which clearly identify the portion of the mineral from the mine that is lignite.

The final issue raised at the hearing and in the comments was the inequity that arises when the small mining company sells raw coal to a cleaning plant and must pay the tax based upon the uncleaned weight. After carefully considering this problem, the proposed regulation has not been revised because under section 4121, the tax is imposed on the first sale after the coal has been cleaned.

DRAFTING INFORMATION

The principal author of this regulation is Robert H. Waltuch of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 48 and 139 are amended by adopting, subject to the following changes, the regulations proposed as a notice of proposed rulemaking published in the FEDERAL REGISTER on August 27, 1979 (44 FR 50065).

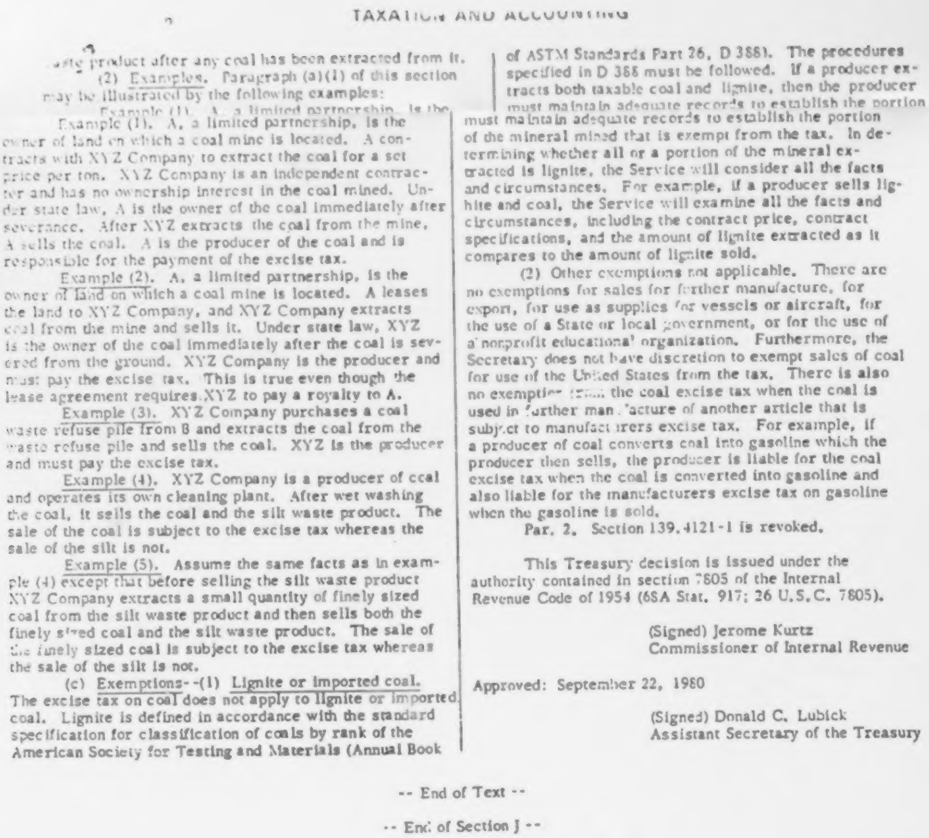
Paragraph 1. Section 48.4121-1, as set forth in paragraph 1 of the notice of proposed rulemaking is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (c) is revised to read as set forth below.

§ 48.4121-1 Imposition and rate of tax on coal.

(a) Imposition of tax. -- (1) In general. Section 4121(a) imposes a tax on coal mined at any time in this country if the coal is sold or used by the producer after March 31, 1978 (see section 4218 and the regulations under that section for rules relating to the use of coal being treated as a sale of coal). For purposes of this section, the term "producer" means the person in whom is vested ownership of the coal under state law immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who extracts coal from coal waste refuse piles or from the silt waste product which results from the wet washing (or similarly processing) of coal. However, the excise tax does not apply to a producer who sells the silt waste product without extracting the coal from it, or to the producer who uses the silt waste product without extracting the coal from it. Furthermore, the excise tax does not apply to the sale or use of the silt



waste product after any coal has been extracted from it.

(2) Examples. Paragraph (a)(1) of this section may be illustrated by the following examples:

Example (1). A, a limited partnership, is the

Example (1). A, a limited partnership, is the owner of land on which a coal mine is located. A contracts with XYZ Company to extract the coal for a set price per ton. XYZ Company is an independent contractor and has no ownership interest in the coal mined. Under state law, A is the owner of the coal immediately after severance. After XYZ extracts the coal from the mine, A sells the coal. A is the producer of the coal and is responsible for the payment of the excise tax.

Example (2). A, a limited partnership, is the owner of land on which a coal mine is located. A leases the land to XYZ Company, and XYZ Company extracts coal from the mine and sells it. Under state law, XYZ is the owner of the coal immediately after the coal is severed from the ground. XYZ Company is the producer and must pay the excise tax. This is true even though the lease agreement requires XYZ to pay a royalty to A.

Example (3). XYZ Company purchases a coal waste refuse pile from B and extracts the coal from the waste refuse pile and sells the coal. XYZ is the producer and must pay the excise tax.

Example (4). XYZ Company is a producer of coal and operates its own cleaning plant. After wet washing the coal, it sells the coal and the silt waste product. The sale of the coal is subject to the excise tax whereas the sale of the silt is not.

Example (5). Assume the same facts as in example (4) except that before selling the silt waste product XYZ Company extracts a small quantity of finely sized coal from the silt waste product and then sells both the finely sized coal and the silt waste product. The sale of the finely sized coal is subject to the excise tax whereas the sale of the silt is not.

(c) Exemptions--(1) Lignite or imported coal. The excise tax on coal does not apply to lignite or imported coal. Lignite is defined in accordance with the standard specification for classification of coals by rank of the American Society for Testing and Materials (Annual Book of ASTM Standards Part 26, D 388). The procedures specified in D 388 must be followed. If a producer extracts both taxable coal and lignite, then the producer

must maintain adequate records to establish the portion

must maintain adequate records to establish the portion of the mineral mined that is exempt from the tax. In determining whether all or a portion of the mineral extracted is lignite, the Service will consider all the facts and circumstances. For example, if a producer sells lignite and coal, the Service will examine all the facts and circumstances, including the contract price, contract specifications, and the amount of lignite extracted as it compares to the amount of lignite sold.

(2) Other exemptions not applicable. There are no exemptions for sales for further manufacture, for export, for use as supplies for vessels or aircraft, for the use of a State or local government, or for the use of a nonprofit educational organization. Furthermore, the Secretary does not have discretion to exempt sales of coal for use of the United States from the tax. There is also no exemption from the coal excise tax when the coal is used in further manufacture of another article that is subject to manufacturers excise tax. For example, if a producer of coal converts coal into gasoline which the producer then sells, the producer is liable for the coal excise tax when the coal is converted into gasoline and also liable for the manufacturers excise tax on gasoline when the gasoline is sold.

Par. 2. Section 139.4121-1 is revoked.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

(Signed) Jerome Kurtz
Commissioner of Internal Revenue

Approved: September 22, 1980

(Signed) Donald C. Lubick
Assistant Secretary of the Treasury

-- End of Text --

-- End of Section J --

WATERBURY, CONN., *September 1, 1981.*

Hon. CHARLES B. RANGEL,
Chairman, Subcommittee on Oversight,
Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN RANGLE: Please accept this as a submission from a victim of Black Lung for the record of the hearings September 17, 18, on the Black Lung Disability Trust Fund.

The purpose of the Black Lung Disability Trust Fund was because the coal industry was not meeting the responsibility for disabled coal miners.

The tax rate on coal tonnage was never a sure source of revenue to the trust fund. The State of Pennsylvania is an example.

The answer is a direct tax on the coal industry.

Hoping your Committee will enter this in its proceedings, I thank you for this opportunity.

Yours,

W. B. CHERKAUSKAS.

BELVA, W. VA., *August 6, 1981.*

DEAR MS. EMILY BRISENDINE: I am very sorry I cannot attend the hearings because I'm not financially able to make the trip to Washington, D.C. But I can give good comments on how they can have money in the trust fund.

1. Raise tax on coal.
2. Any mine do not belong to the union, make them pay royalty on coal.
3. Instead of letting people draw money from black lung trust fund, from the time they signed up it should be pay when they were found disabled.
4. Make sure people have proof of working in mine, such as birth record of children.

5. If we had man to run for the world leader instead of movie star there would be money in the trust fund.

6. If there were not too many fingers in the pie, there would be money in the trust fund.

7. If the foreigners would stay in their own country instead of coming over in our country, we would have enough money to go on.

8. If our President would stop sending money to the foreign aid, I believe each country should take care of their own people.

Sincerely,

RUTH HANSHAW,
National Black Lung Committee.

APPENDIX

[Press release No. 11, Thursday, Oct. 15, 1981]

REPRESENTATIVE CHARLES B. RANGEL, CHAIRMAN OF THE SUBCOMMITTEE ON OVERSIGHT OF THE COMMITTEE ON WAYS AND MEANS, ANNOUNCES RECEIPT OF PROPOSAL FROM THE DEPARTMENT OF LABOR TO AMEND THE BLACK LUNG PROGRAM

The Honorable Charles B. Rangel (D-N.Y.), Chairman of the Subcommittee on Oversight of the Committee on Ways and Means today announced receipt of a proposal by the U.S. Department of Labor to amend the Black Lung program.

The Subcommittee held hearings on the insolvency of the Black Lung Disability Trust Fund on July 27, 1981 and September 28, 1981. The Department of Labor was an invited witness for both hearings and expressed an intention to testify on September 28. However, at the last minute, the Department declined to testify, stating that the black lung program was to be reviewed by a task force which was being formed to review federal entitlement programs. This week, the Department sent the Subcommittee a proposal which it says the Office of Management and Budget has deemed to be "in accord with the program of the President."

The Subcommittee on Oversight included the Department of Labor proposal in the official hearing record. In order that all interested parties can review the proposal, which was not available at the hearing, the Subcommittee will make copies available through the Subcommittee office in Room 1101 of the Longworth House Office Building, Washington, D.C. 20515. To receive comments on the Department of Labor proposal, the hearing record will remain open until October 30, 1981.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, D.C., October 9, 1981.

Hon. CHARLES B. RANGEL,
Chairman Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is to convey to you a proposal to amend the Black Lung program that will alleviate the causes of the Trust Fund deficiencies you have noted in the course of recent hearings by your Subcommittee.

The Office of Management and Budget advises that submittal of this proposal is in accord with the program of the President.

Sincerely yours,

RAYMOND J. DONOVAN.

Enclosure.

STATEMENT IN EXPLANATION OF BLACK LUNG BENEFITS AND REVENUE AMENDMENTS OF 1981

The purpose of this legislation is to bring solvency to the Black Lung Disability Trust Fund (the Fund), to make certain adjustments to eligibility standards and benefits for future claims in light of changed conditions, and to transfer to the Fund the liability of responsible operators in certain cases affected by the 1977 amendments to the program. Eligibility adjustments will only affect claims filed on or after the date of enactment of this legislation.

The Fund is a financing mechanism for paying workers' compensation benefits to eligible miners and survivors under the Black Lung Benefits Act. Thus, it is to be financed by producer taxes which were intended to be adequate to cover the program's outlays for medical, disability, and death benefits, as well as the costs of administration. The Treasury is authorized, however, to make loans to the Fund (repayable with interest) to make up deficiencies in tax revenues. The inability of the Fund's revenues to keep pace with its expenditures will result in a projected deficit, including loan principal and compounded interest, of $9.0 billion by 1995.

The legislation to restore the Fund to a solvent condition has been designed to eliminate the need for Treasury advances after fiscal year 1985, and to allow full repayment to the Treasury of accumulated principal and interest by fiscal year 1995. Regular reports will be required to ensure that the present situation does not recur without adequate opportunity to adjust Fund revenues and outlays, and to avoid the opposite result of accumulation of unnecessary surpluses.

A section-by-section analysis of the legislation follows.

Section 1. Short Title.

Section 2. Eligibility Standards.

This section would eliminate from Part B and Part C five special provisions that were enacted to deal with a large group of miners and survivors who faced difficulty in proving eligibility for black lung benefits. These provisions were enacted to deal with claims involving periods of time when medical diagnoses were inadequate or not widely available, and poor medical and death records kept. There is no longer sufficient reason to keep these rules in place.

Subsection (a) of this section would eliminate for claims filed on or after the date of enactment the present restriction in Part B on the Department of Labor's authority to use a second opinion on X-rays that might indicate the absence of black lung disease. Subsection (d) would apply this change to Part C claims. This restriction was enacted as a reaction to what was considered to be an overly stringent eligibility policy in the past. Precluding any use at all of such re-readings, however, was not and is not the solution to such problems, and it in fact inhibits legitimate auditing of claim validity. This change in no way implies a policy of disapproving claims solely on the basis of a negative X-ray.

Subsection (b) would eliminate the application of 3 presumptions in Part B. Subsection (d) would make those changes applicable to Part C claims.

Paragraph (1) of subsection (b) would render inapplicable, to claims filed on or after the date of enactment, a rebuttable presumption that a miner with 10 years of coal mine employment who died as a result of a respirable disease died as a result of black lung. The availability in recent years of better diagnosis prior to death makes continuation of this presumption unnecessary.

Paragraph (1) of subsection (b) would also render inapplicable, for all claims filed on or after the date of enactment, a rebuttable presumption of black lung for miners with 15 years of coal-mine employment. There remains no need for this presumption in light of the current availability of more accurate medical diagnoses.

Paragraph (2) of subsection (b) would render inapplicable, to claims filed more than six months after the date of enactment, a rebuttable presumption of eligibility of survivors of a miner who died on or before March 1, 1978 and who had 25 years in the coal mines prior to June 30, 1971. Few if any new claims by the survivors of miners who died before March 1, 1978 are expected in the future, and this presumption can therefore be eliminated.

Subsection (c) of this section would alter the rule set forth in Part B that a widow's affidavit shall be considered, where there is no medical or other relevant evidence in the case of a deceased miner, to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that death was due to that disease. Subsection (d) would apply this change to Part C claims. The revised rule would, with respect to claims filed on or after the date of enactment, accept affidavits in such cases from third parties who could not receive benefits, but would not accept as sufficient only affidavits from interested parties. Such third-party affidavits should be readily available, and will alleviate the potential for improper claims determination that exists under the present rule.

Subsection (e) would provide for a study of key eligibility criteria under the program: the existence of black lung disease, and the extent of disability that follows from that fact. The study would provide an overview of the current medical information in this regard, and would be provided to the Congress 18 months after enactment.

Section 3. Benefits.

This section would make several changes to the benefits provisions of the Act.

At present, survivors of miners who die while receiving black lung benefits or while totally disabled by the disease receive benefits without having to demonstrate a causal connection between the disease and the death. This section would, with respect to claims filed on or after the enactment date of these amendments, limit survivors' entitlement to those cases where death resulted from black lung disease and not some unrelated event. Survivors of those miners who are currently receiving benefits, or who have filed for them, will not be affected by this change. These survivors will receive benefits even if the miner eventually dies from causes unrelated to black lung.

Some miners are able to engage in other employment while receiving black lung benefits because of the Act's definition of total disability. This section would also apply to Part C claims of miners filed on or after the date of enactment the Social Security excess earnings offset already applied in the case of Part B claimants. The offset provides that the benefits of a miner are reduced by a portion of other earnings during the period.

In addition, this section would require the Secretary of Labor to study benefits available to the same individual under this program and other social programs, such as workers' compensation, unemployment insurance, and so forth. Under the present law, black lung benefits are reduced by the amount of such benefits when they are awarded on account of pneumoconiosis, but not if awarded for other reasons. It would also entail a comparison of the situation were workers' compensation benefits paid in lieu of benefits under this program. The results of the study would be due to the Congress 18 months after enactment.

Finally, this section would make a technical change to the Act's benefits provisions. Black Lung benefits are currently 50 percent of the "minimum" benefits for Federal employees in grade GS-2 under the Federal Employees' Compensation Act. Benefits under Black Lung thus equal 37½ per centum of the monthly pay for grade GS-2, step 1. Since other pending legislation may change the method of computing FECA benefits, failure to sever Black Lung benefits from the FECA system could lead to confusion about Black Lung benefit levels. This section accomplishes such severance, leaving Black Lung benefits at their present level, 37½ per centum of the monthly pay of an employee in grade GS-2, step 1.

Section 4. Interim Benefits; Interest Charges.

Operators determined by the Secretary of Labor or subsequent reviewing authority to be responsible for Black Lung Payments to a claimant are, as of the date of that determination, responsible for that debt. That means they must begin paying regular monthly benefits within 30 days, as well as pay a lump-sum award for compensation determined to be due as a result of any black lung caused disability or death from as early as 1974 to the time of the decision ("retroactive benefits"). Many operators do not, however, assume either of these obligations while they are contesting their liability, and the Fund is required to make these payments ("interim benefits") for the operator at an interest charge of 6 percent. The result is that the Fund has incurred a heavy debt that has added to its solvency problems, and operators have had an economic inducement to delay final claims adjudication and invest the funds at a rate much higher than the 6 percent accumulated interest they must eventally repay the Fund.

The amendments in this section would make several changes to alleviate this situation. To ease the burdens of the Fund, subsection (a) would eliminate its obligation to pay retroactive benefits to claimants in the event of operator nonpayment. This would not relieve operators of their obligation to pay these awards, and subsection (c), discussed below, would add some economic inducement to discourage unwarranted delays in making payment. The Fund would continue to pay prospective interim benefits in the event of operator non-payment, however, to ensure some income is provided in those cases that in fact are contested. To discourage unwarranted reliance on the availability of this money, subsection (b) would provide that for those payments, and for other outlays of the Fund, interest charges would be at the same rate as for other overdue Federal debts. That rate is set by the Secretary of the Treasury consistent with money market conditions. Under this provision, an interest rate would be set for each claim's account as of the date initial outlays are made, usually 30 days after decision. That rate would apply to all subsequest outlays on that claim. Those claims already being paid on the date of enactment would be reassessed at that time with the current interest rate, and the new rate would apply to all subsequent outlays on that claim. It should be noted that current Treasury Department rules already require that overpayments to claimants be charged interest at the same rates which this section would apply to overdue payments of operators.

Subsection (c) of this section would complement these changes by raising the interest rate applicable to benefits determined to be payable by a responsible operator to claimants by the initial or subsequent decisions to the same rate the Fund will charge. This provision would thus have the same effect on operator decisions to pay retroactive benefits as subsection (b) would provide with respect to prospective benefits. This subsection would clarify present rules by providing that such interest starts accumulating at the first point in the claims review process that a decision is made to make such award.

Section 5. Liability of Fund for Special Claims.

This section of the bill would transfer to the Fund the liability for claims closed prior to the 1977 amendments to the Black Lung Benefits Act, and subsequent reopened and approved pursuant to the special review process and standards established by those amendments. The purpose of this provision is to relieve operators from a significant payment burden for which the insurance industry contends coverage is unavailable. Pending State and Federal litigation has thrown into question whether insurance carriers covering black lung liability of such operators are responsible, under their insurance contracts, for the new liabilities created by the changes adopted by the 1977 Amendments.

The provision will affect approximately 10,200 cases. This consists of approximately 8,000 cases originally filed with the Social Security Administration (1400 Part B cases approved by SSA, and 6543 Part B cases approved by DOL), and about 2200 Part C, responsible operator cases. The transfer will require extra outlays from the Trust Fund. Those additional outlays have been taken into account in determining the expected Fund solvency date of 1995 which enactment of these amendments will bring about.

Section 6. Excise Tax.

The present excise tax rates are $.50 per ton for underground coal, $.25 per ton for surface coal, or 2 percent of the sales price, whichever is less. The bill would add a temporary special tax effectively raising those tonnage rates to $1.00 per ton for underground coal and $.50 per ton for surface coal with a 4 percent of the sales price cap. Examination of a variety of alternative taxing schemes indicates that the one proposed is a viable way to achieve the necessary funding without overtaxation of the industry or alteration of the present burdens on the varius sectors thereof.

As previously stated, it is anticipated that the changes proposed by legislative and administrative action will result in Fund solvency by fiscal year 1995. The special added tax will therefore expire at that time, or sooner if the debt is fully repaid. An annual assessment by the Trustees on Fund solvency will be required, both to trigger a tax cutoff before 1995 if that is possible, and to ensure that if future adjustments to the tax are needed they can be handled in a timely and appropriate fashion. The tax may not be cut off before 1995, however, if both Houses of Congress pass a resolution of disapproval of the Trustees' assessment.

Section 7. Effective date; separability.

The effective date of the Amedments is the date of enactment. The tax changes will actually go into effect, however, on January 1, 1982.

COMPARISON OF CURRENT LAW AND LEGISLATIVE PROPOSAL

[In millions of dollars]

Fiscal year	Total obligations			Advances needed			Cumulative fund balance	
	Current law	Proposed [1] legislation	Savings	Current law	Proposed [1] legislation	Difference	Current law	Proposed [1] legislation
1982	726.5	792.6	[2] −66.1	418.0	268.5	[3] 149.5	−1,944.7	−1,795.2
1983	714.8	699.6	15.2	384.7	70.7	314.0	−2,329.4	−1,866.0
1984	766.1	712.5	53.6	409.6	49.1	360.5	−2,739.0	−1,915.1
1985	815.9	722.0	93.9	442.0	17.0	425.0	−3,181.0	−1,932.1
1986	861.5	738.5	123.0	461.3	2.6	458.7	−3,642.2	−1,934.7
1987	895.0	743.6	151.4	474.4	0	474.4	−4,116.6	−1,898.4
1988	936.9	753.3	183.6	505.3	0	505.3	−4,622.0	−1,822.1
1989	988.8	758.7	230.1	551.3	0	551.3	−5,173.3	−1,713.2
1990	1,041.1	759.0	282.1	574.1	0	574.1	−5,747.4	−1,546.4
1991	1,094.1	753.2	340.9	600.2	0	600.2	−6,347.6	−1,321.6
1992	1,147.6	739.0	408.6	625.2	0	625.2	−6,972.8	−1,027.0
1993	1,201.3	715.7	485.6	648.7	0	648.7	−7,621.5	−650.5
1994	1,255.0	678.1	576.9	670.5	0	670.5	−8,292.0	−174.3
1995	1,308.3	642.6	665.7	690.0	0	690.0	−8,981.9	+396.9

[1] Assumes $0.50 surface and $1 underground coal excise taxes effective Jan. 1, 1982 through Dec. 31, 1995. Proposal provides for possible return to present rates at time of solvency, if sooner; this would be sometime in 1995 under these projections. Impact of 4 percent FOB tax cap could not be simulated directly; may delay retirement of total debt 1 to 2 years.

[2] Proposal costs more in first year due to impact of transferring 10,200 responsible operator cases to fund of which an estimated 2,000 cases are not already in interim pay status.

[3] Even though trust fund obligations are higher in fiscal year 1982 under the proposal, fiscal year 1982 advances are smaller because of higher tax yield.

Cumulative savings in obligations:	*Millions*
Fiscal years 1982-86	[1] $219.6
Fiscal years 1987-95	3,324.9

Cumulative savings in obligations—Continued	Millions
Fiscal years 1982-95	3,544.5
Cumulative difference in advances:	
Fiscal years 1982-86	[1] 1,707.7
Fiscal years 1987-95	5,339.7
Fiscal years 1982-95	7,047.4

[1] Proposal saves $219.6 million in benefit costs and interest charges over 5 years, but more significantly, requires $1.707 billion less in advances because of higher tax yield.

Source: DOL/ESA/OWCP, Oct. 6, 1981.

A BILL To amend the Black Lung Benefits Revenue Act of 1977, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; GENERAL REFERENCE

SECTION 1. (a) This Act may be cited as the "Black Lung Benefits and Revenue Amendments of 1981."

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Mine Safety and Health Act of 1977.

ELIGIBILITY STANDARDS

SEC. 2. (a) The fourth sentence of Subsection (b) of section 413 is amended by inserting immediately after the words "In any case" the phrase ", other than that involving a claim filed on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(b)(1) Paragraphs (2) and (4) of subsection (c) of section 411 are each amended by inserting a new sentence at the end of each as follows:

"The provisions of this paragraph shall not apply with respect to claims filed on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981."

(2) Paragraph (5) of subsection (c) of section 411 is amended by inserting a new sentence at the end thereof as follows:

"The provisions of this paragraph shall not apply with respect to claims filed on or after the day that is 180 days after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981."

(c) The third sentence of subsection (b) of section 413 is amended by inserting immediately after the word "affidavits" the phrase ", from persons not eligible for benefits in such case with respect to claims filed on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(d) Section 430 is amended by striking the words "and by" and inserting in lieu thereof a comma, and by inserting immediately after the phrase "the Black Lung Benefits Reform Act of 1977" the phrase "and the Black Lung Benefits and Revenue Amendments of 1981".

(e) The Secretary of Labor, in consultation with the Secretary of Health and Human Services, shall undertake a study of current medical methods for the diagnosis of pneumoconiosis, and of the nature and extent of impairment and disability that are attributable to the existence of both simple and complicated pneumoconiosis. The study, together with appropriate recommendations, shall be transmitted to the Congress no later than 18 months after the date of enactment of this Act.

BENEFITS

SEC. 3. (a)(1) Section 412(a)(2) is amended by inserting immediately after the word "or" the phrase ", except with respect to a claim filed under Part C of this title on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(2) Section 412(a)(3) is amended by striking the first comma therein, and by inserting immediately after the word "or" the first time it appears therein the phrase ", except with respect to a claim filed under Part C of this title on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(3) Section 412(a)(5) is amended by striking out the second comma therein, by striking out the phrase "of a miner" the third time it appears therein, and by inserting immediately after the word "or" the first time it appears therein the phrase ", except with respect to a claim filed under Part C of this title on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(4) Section 401(a) is amended by striking the phrase "or who were totally disabled by this disease at the time of their deaths" each time it appears.

(5) Section 411(a) is amended by inserting immediately after the word "or" the phrase ", except with respect to a claim filed under Part C of this title on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(6) Section 422(1) is amended by inserting immediately before the period at the end thereof the phrase ", except with respect to a claim filed under this Part on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(b) Subsection (g) of section 422 is amended by adding at the end thereof a new sentence as follows:

"In addition, the amount of benefits payable under this section with respect to any claim filed on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981 shall be reduced, on a monthly or other appropriate basis, by the amount by which such benefits would be reduced on account of excess earnings of such miner under section 203(b) through (1) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act."

(c) The Secretary of Labor shall undertake a study of the benefits provided by Title IV of the Federal Mine Safety and Health Act of 1977, other benefits received by those who receive benefits under that title, and benefits which would be received were State workers' compensation programs applicable in lieu of benefits under that title. The study, together with appropriate recommendations, shall be transmitted to the Congress no later than 18 months after the date of enactment of this Act.

(d) Paragraph (1) of subsection (a) of section 412 is amended by deleting the phrase "50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5, United States Code," and inserting in lieu thereof the phrase "37½ per centum of the monthly pay rate for Federal employees in grade GS-2, step 1."

INTERIM BENEFITS; INTEREST CHARGES

SEC. 4. (a)(1) Paragraph (1) of subsection (a) of section 424(a) is amended by inserting immediately before the phrase "the operator" in subparagraph (A) thereof the phrase "in the case of a claim filed before the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981,".

(2) Paragraph (1) of subsection (a) of section 424(a) is further amended by redesignating the present subparagraph (B) as subparagraph (C), and by adding a new subparagraph (B) as follows:

"(B) in the case of a claim filed on or after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981, the operator liable for the payment of such benefits—

(i) has not commenced payment, within 30 days after the date of the determination that an award should be made, of benefits accruing after the date of such determination, or

(ii) has not made a payment of benefits accruing after the date of such determination within 30 days after that payment is due, or".

(b) Subsection (b) of Section 424 is amended by inserting in the first sentence of paragraph (1) thereof, immediately after the phrase "attributed to him" and immediately before the period at the end thereof, the following:

"and interest thereon. In the case of interest in connection with payments from the Black Lung Disability Trust Fund for which the operator is liable, expenditures that are made after the date of enactment of the Black Lung Benefits and Revenue Amendments of 1981 shall be charged interest, until repayment is made, at the rate which the Department of the Treasury has determined is applicable, on the date of the first such expenditures, to late payments owed to the Federal Government; and with respect to expenditures made prior to the date of enactment of those Amendments, any future interest on such expenditures, until repayment is made, shall be at the rate which the Department of the Treasury has determined is applicable, on the date of enactment of such Amendments, to late payments owed to the Federal Government".

(c) Subsection (d) of section 422 is amended by adding two new sentences at the end thereof as follows:

"If payment is not made within the time required, interest shall accrue to such amounts at the rates set forth in section 424(b)(1) of this title for interest owed to the Fund in connection with payments under section 424(a)(1). With respect to payments withheld pending final adjudication of liability, in the case of claims filed on or after the effective date of the Black Lung Benefits and Revenue Amendments of 1981, such interest shall commence to accumulate 30 days after the date of the determination that such an award should be made."

LIABILITY OF FUND FOR SPECIAL CLAIMS

Sec. 5. (a)(1) Subsection (c) of section 422 is amended by inserting "(1)" after "pneumoconiosis", and by inserting before the period at the end thereof the following phrase: "; or (2) which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 435".

(2) Subsection (j) of section 422 is amended by striking out "or" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or", and by adding at the end thereof the following new paragraph:

"(3) in which there was a claim denied before March 1, 1978, and such claim is or has been approved in accordance with the provisions of section 435.".

(b) Subsection (a) of section 424, as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(7) the reimbursement of operators and insurers for amounts paid by such operators and insurers (other than amounts paid as penalties, interest or attorney fees) at any time in satisfaction (in whole or in part) of any claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 435.".

(c) Section 402 is amended by inserting at the end thereof the following new paragraph:

"(i) For the purposes of subsection (c) and (j) of section 422 and paragraph (7) of subsection (a) of section 424, the term "claim denied" means a claim:

(1) denied by the Social Security Administration; or

(2) in which (A) the claimant was notified by the Department of Labor of an administrative or informal denial more than one year prior to the date of enactment of the Black Lung Benefits Reform Act of 1977 and did not, within one year from the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence, or (B) the claim was denied under the law in effect prior to the date of enactment of the Black Lung Benefits Reform Act of 1977 following a formal hearing or administrative or judicial review proceeding."

EXCISE TAX

Sec. 6. (a) Subchapter B of Chapter 32 of the Internal Revenue Code of 1954 (relating to imposition of coal excise taxes) is amended by adding at the end thereof a new section as follows:

"Sec. 4122. Imposition of Special Tax.

(a) Special Tax Imposed.—There is hereby imposed on coal sold by the producer on or after January 1, 1982 a special tax, in addition to the tax imposed by section 4121, at the rates of—

(1) 50 cents per ton in the case of coal from underground mines located in the United States, and

(2) 25 cents per ton in the case of coal from surface mines located in the United States.

(b) Limitation on Tax.—The amount of tax with respect to a ton of coal under this section and section 4121 shall not exceed 4 percent of the price at which such ton of coal is sold by the producer.

(c) Tax Not to Apply to Lignite.—The tax imposed by subsection (a) shall not apply in the case of lignite.

(d) Tax Expiration.—The special tax imposed by subsection (a) shall not be applicable—

(1) to any coal sold after December 31, 1995; or

(2) if earlier, to any coal sold after 60 days have passed from the date the Congress receives a recommendation under section 3(c)(1) of the Black Lung Benefits Revenue Act of 1977 from the Trustees of the Black Lung Disability Trust Fund that the

special tax be eliminated, based upon an assessment that accumulated principal and interest owed by the Fund to the Treasury have been repaid, provided such recommendation is not disapproved within such 60 day period by a joint resolution of both Houses of the Congress."

(b) Section 3(c)(1) of the Black Lung Benefits Revenue Act of 1977 is amended by adding a new sentence at the end thereof as follows:

"Any such report transmitted to the Congress in 1982 or thereafter shall contain a specific assessment of the solvency of the fund, recommendations of the Trustees with respect to any changes in the revenue or outlays of the Fund necessary to assure continued solvency without the accumulation of unnecessary surpluses, and, prior to 1995, a recommendation to eliminate the special tax based upon an assessment that accumulated principal and interest owed by the Fund to the Treasury have been repaid."

EFFECTIVE DATE; SEPARABILITY

SEC. 7. (a) The provisions of this Act shall take effect upon enactment.

(b) If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

NATIONAL
COAL
ASSOCIATION

CARL E. BAGGE
President
(202) 463-2647

October 30, 1981

Honorable Charles B. Rangel
Chairman
Subcommittee on Oversight
Ways and Means Committee
1102 Longworth House Office Bldg.
Washington, D.C. 20515

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Ways and Means
Subcommittee on Oversight

Dear Mr. Chairman:

We appreciate this opportunity to present further information relative to our testimony presented September 28, 1981, regarding the insolvency of the Black Lung Disability Trust Fund. Following are answers to the questions contained in your letter of 19 October 1981:

Question 1

As you know, and as was detailed in my testimony, the coal industry has never opposed providing benefits to legitimate claimants. But, as so often occurs, continual loosening of the qualification criteria has discredited a meritorious program.

We believe that the proposal submitted by the Department of Labor represents a good starting point, however, as was outlined in my testimony, further reform beyond that contained in the proposal is needed. For example, definitions are not changed. In addition, the proposal precludes examination of the abuses which resulted in the Trust Fund deficit, in that it will only affect claims filed after the date of enactment.

Although the NCA would like to see the complete package of benefits reform we proposed enacted at the time of the proposed tax increase, we recognize that budgetary exigencies argue strongly for immediate action on the DOL proposal and for deferral of the more controversial but still needed reforms until a later date.

In summary, Mr. Chairman, the DOL proposal will accomplish two important goals: (1) eliminate many of the abuses which exist and (2) provide sufficient resources so that further advances from the Treasury necessary to keep the Fund solvent will not be required. While adequate, the DOL proposal will not eliminate the need to effect further benefits reform, particularly with respect to definitions and eventual transfer of the program to the states.

1130 Seventeenth Street, N.W.
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Question 2

The reform proposal outlined in my testimony would affect current as well as future claimants. By doing so, current benefit recipients not qualifying under the new criteria would be removed from the program, thereby reducing yearly outlays.

The computer model developed by the Department of Labor purports that absent a tax increase, the Trust Fund would never achieve solvency. Without having the opportunity to duplicate the model, I cannot comment on this assumption. I do believe, however, that should the eligibility reform criteria be applied retroactively as well as prospectively, significant savings will be achieved, savings which may negate the need for a tax increase.

Question 3

The transfer mechanism in the Administrations black lung proposal would help alleviate an inequitable situation created for individual coal operators by the retroactivity of the 1977 black lung amendments.

Prior to 1978, those black lung claims filed before July 1973 were the responsibility of the federal government and those filed on or after July 1, 1973, were the responsibility of individual coal operators. The 1977 amendments placed the entire responsibility for black lung disability benefits payments on the coal industry, either through the Trust Fund tax mechanism or through the assignment of liability to individual coal operators. In addition, the 1977 law made several changes in the eligibility criteria and ordered agencies to apply these new criteria retroactively to claims that had been denied or were pending prior to the enactment of the new law. This resulted in an unexpected and dramatic increase in the claims assigned to individual coal operators.

Some of the affected coal operators were insured through commercial insurers, others through state insurance funds, and still others were self-insured. None were forewarned of or financially prepared for the impact of these retroactive amendments. For many companies, the liabilities associated with these unanticipated claims are potentially devastating. Pending litigation between coal operators and insurance companies on the issue of whether their insurance policies cover these claims has the potential for exposing those coal companies which purchased insurance to huge liabilities in the future. The coal industry has questioned the legality of the retroactive features of the 1977 law and believes the inequity seriously affects the coal industry.

Moreover, the uncertainty as to the ultimate outcome of pending litigation, in addition to the time and expense involved in an extended litigation effort, increases the appeal of a legislative solution for all parties. A legislative solution ensures that the burden of resolving this issue does not fall unfairly on any particular group of operators.

Question 4

Given the highly competitive nature of the coal industry, DOL's proposed increase in the coal tax will definitely increase the price of coal in both domestic and international markets by an approximately equal amount. While NCA does not agree with the EIA analysis that as much as a five-fold increase in the tax could be imposed without significant effect on coal production or employment, we do believe that the proposed doubling of the tax would have no significant, identifiable effect. This conclusion is possible only because of the considerable competitive advantage which coal holds over the competing fuels of oil and natural gas on a Btu-equivalent pricing basis and should not be interpreted to mean that certain producers, who are already in a precarious, marginal position in coal markets, will not be adversely affected.

Question 5

No.

Question 6

While we have been briefed on the results of DOL's model, NCA has not had the opportunity to review or to analyze the structure of the model in the detail needed to evaluate competently the reasonableness of its assumptions. DOL's predictions with respect to the eventual solvency of the Trust Fund do appear to be reasonably accurate.

Sincerely,

Carl Bagge

Carl E. Bagge

CEB/pag

JOHN J. KEARNEY Senior Vice President

EDISON ELECTRIC
INSTITUTE The association of electric companies

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October 30, 1981

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Ways and Means
Subcommittee on Oversight

The Honorable Charles B. Rangel, Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The Edison Electric Institute (EEI) appreciates the opportunity you have provided us to comment on the Department of Labor proposal relative to the Black Lung Disability Trust Fund. Our analysis of the proposal reveals the following:

-- Doubles the black lung excise tax to $.50 per ton for surface-mined coal and $1.00 per ton for deep-mined coal with a 4% selling price cap on the total tax. Estimated additional cost through Fiscal Year 1986--$2 billion.

-- Increases interest rates on repayments by responsible operators; estimated additional cost through Fiscal Year 1986--$39 million.

-- Transfers some 10,000 claims from operators or insurers to the Black Lung Disability Fund financed by the excise tax; estimated additional cost through Fiscal Year 1986--$221 million.

-- Tightens eligibility criteria concerning use of x-rays, prescriptions, use of affidavits, and survivors' benefit for a total reduction in black lung benefits outlays through Fiscal Year 1986 of $256.7 million.

-- The net effect of these reforms is to increase the cost of this program by slightly over $2 billion through Fiscal Year 1986.

-- The proposal does not address the major problems the electric utility industry has with the black lung program--the definitions of "miner", "pneumoconiosis", and "total disability". The failure to address these issues, likely, will lead to continuing abuses such as those documented by the U.S. General Accounting Office and presented to Congress.

The Hon. Chas. B. Rangel
October 30, 1981
Page 2

-- Investor-owned utilities project that they will consume 648,096,000 tons of coal in 1982, 403,163,808 from surface mines and 244,332,192 tons from underground mines. This proposal is estimated to increase the cost to investor-owned utilities in 1982 by $223,107,048.

For the reasons cited above, the Edison Electric Institute is in opposition to the Department of Labor proposal.

In response to the specific questions referenced in your recent letter, the following answers are as follows:

(2) The average annual amount a business or residence would have to pay if the coal excise tax is doubled is impossible to estimate. The numerous assumptions required to make such an estimation would render the results invalid.

(3) Black lung taxes are only one of many costs a utility company can pass along to its customers in the form of "fuel adjustments". Accurate estimation of the effect of coal tax for black lung in 1978 on electric rates is impossible.

(4) Approximately 11% of homes in the United States are electrically heated. Nearly all homes, however, rely upon the usage of electricity for the operation of their heating systems.

(5) The transfer of claims provision proposed in the Department of Labor proposal poses no particular problem for EEI. Absent substantive reform, however, such a proposal can only exacerbate an already untenable position.

(6) No. We have not seen the Department of Labor model.

We hope the above comments are constructive. Thank you for the opportunity to comment.

Sincerely yours,

John J. Kearney

JJK:jam

National Association of Manufacturers,
Washington, D.C., October 30, 1981.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight, Ways and Means Committee,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: The National Association of Manufacturers appreciates the opportunity to respond to the Department of Labor's proposal regarding the Black Lung Disability Program and the questions posed in your October 19, 1981 letter.

Question 1. "Do you have any comments on the enclosed proposal submitted by the Department of Labor?"

NAM's Workers' Compensation Subcommittee has examined the Department of Labor's proposal. As was indicated during NAM's testimony on September 28, the Black Lung Program is in desperate need of major substantive legislative reform.

NAM commends the DOL for embodying several of the necessary changes within its proposal. However, NAM's WC Subcommittee is concerned that the DOL changes are for the most part prospective in nature and do not affect claims already in the system. NAM urges this subcommittee to amend DOL's proposal to incorporate the recommendations which we set forth in the September 28 testimony. NAM recommends that the proposed changes apply to all claims not perfected by the date of enactment.

Question 2. "You have proposed many changes in the benefit and entitlement portion of the Black Lung Program. However, will the Black Lung Disability Trust Fund become solvent without an increase in the coal excise tax even with these changes in the program? Do you have any figures on how much money your proposed changes in the benefit portion of the program would save the Trust Fund?

If the NAM recommended proposals are enacted, we feel the Black Lung Disability Trust Fund would eventually become solvent without an increase in the coal tonnage tax. However, NAM believes it is essential to restore the financial integrity of the BL Program in a more expeditious manner; therefore, we support the concept of combining substantive legislative reform provisions with a temporary increase in coal tonnage. As was explicitly set forth in our testimony, NAM strongly believes that an increase in tax would be fair to coal operators ONLY if that tax is accompanied by substantive reform provisions. NAM reiterates its recommendations as set forth in September 28 testimony:

Turn the responsibility for black lung program over to state workers' compensation programs; eliminating all statutory presumptions; redefining "coal miners' pneumoconiosis" to eliminate coverage of unrelated non-occupational diseases; Redefining "miner" to include only those workers involved in the extraction of coal; Redefining a claimant be required to present medical proof of disability or death due to pneumoconiosis in order to receive BL benefits; Eliminating automatic survivors' benefits; Eliminating the use of an affidavit as evidence of BL when not corroborated by other sufficient medical evidence; Eliminating restrictions on the re-reading of x-ray evidence; Requiring that all judicial proceedings regarding a claim be exhausted before benefits are made payable; and Giving the Black Lung Trust Fund the authority to context claims for which it could be liable.

NAM does not have any figures on the potential savings of our recommendations. The Department of Labor manages the operation of the Trust Fund and should be able to provide the subcommittee with such estimates of savings.

NAM anticipates a decrease in the demand on the Trust Fund in that it is expected that the approval rate will decrease appreciably over the next few years since it is estimated that disabling coal workers' pneumoconiosis will not occur in more than 3 percent to 5 percent of the claims.

Question 3. "What is your position on proposals to transfer to the Trust Fund the liability for certain claims arising form the re-review required by the 1977 Amendments?"

The transfer to the Trust Fund of liability arising from the re-review of certain cases pursuant to 1977 Amendments is of tremendous concern to NAM. Such transfer will increase the deficit of the Trust Fund by an undetermined amount.

The 1977 Amendments created an extremely large backlog of claims. According to a recent study of the U.S. Department of Labor, Office of Inspector General, Office of Loss Analysis and Prevention, (executive summary attached) since the passage of BL Benefits Reform Act of 1977, the Employment Standards Administration has treated the rapid processing of claims and the efficient, responsible management of financial resourecs as mutually exclusive objectives. NAM recommends that any transfer of liability to the Trust Fund be accompanied by safeguards to prevent the improper and/or fraudulent disbursement of funds. NAM urges this Subcommittee on Oversight to examine the Inspector General's report on "Assessment of Resource

Loss From Black Lung Program" and take appropriate action to insure that the ESA accepts its management responsibility of insuring proper control over the Program and its fiscal assets; the documented fraud and abuse significantly impacts upon the solvency of the Fund.

Because of the inaccuracies of past DOL predictions, NAM is somewhat skeptical of DOL estimates. However, if accurate, the estimate of 10,200 cases affected by the transfer provisions seems reasonable and does not appear open-ended. NAM could accept such a transfer if the number of cases have been predicted accurately.

Question 4. "The Department of Labor has a computer model to estimate when the Trust Fund would become solvent under various proposals. Have you had an opportunity to review or analyze the model? If so, have you found its assumptions to be reasonable and its predictions to be accurate?"

Although we have seen the final comparison figures regarding Fund solvency, we have not analyzed the computer model. Coal production, claims filings and approval rates are critical elements that should be thoroughly analyzed. Based on previous experience with this program and Department of Labor estimates associated therewith, we seriously question the validity and accuracy of any figures emanating from the Department of Labor.

Thank you for the opportunity to present the concerns and attitudes of our membership regarding the DOL's proposal and the resulting problems of continued federal intervention into a program which NAM feels is adequately covered by state Workers' Compensation systems.

Sincerely,

RUSSELL GUY,
Assistant Manager, Safety and Workers' Compensation, Bethlehem Steel Corp., member, NAM Workers' Compensation Subcommittee.
DANIEL W. VANNOY,
Associate Director, Product Liability and Employee Compensation System

REPORT NUMBER: TA-1D-01F

ASSESSMENT OF
RESOURCE LOSS FROM
BLACK LUNG AUTOMATED
PAYMENT SYSTEMS

U.S. DEPARTMENT OF LABOR
OFFICE OF INSPECTOR GENERAL
OFFICE OF LOSS ANALYSIS AND PREVENTION

September 1981

FINAL REPORT

EXECUTIVE SUMMARY

The Office of Loss Analysis and Prevention (OLAP) has conducted a two part evaluation of Black Lung claim processing and automated payment systems within the Division of Coal Mine Workers' Compensation Programs (DCMWC).

The first effort focused on the identification and analysis of loss vulnerabilities in claim processing and payment procedures. That report identified forty areas of vulnerability within payment system operations and proposed corrective actions for each area indicated.

In expressing concern that the Black Lung Program's payment systems and operations were extremely vulnerable to both internal and external fraud and abuse, the vulnerability assessment notes:

> "....there are many individual loss hazards, the possibility of the identified hazards resulting in loss events is great, and, if such events occur, the impact on the fiscal assets of the program will be significantly severe."

The recommendations stressed the urgency of making substantial modifications to the payment systems.

This report presents the second aspect of the Black Lung Program analysis: An assessment of historical and continuing resource loss from automated payment processes, an identification of weaknesses in the automated systems, and a proposal of measures designed to reduce future loss and to provide for the early detection of loss events which may occur.

The project team had initially planned to review documentation contained in the case files relating to a randomly selected sample of social security numbers. Such information was to have been examined for consistency, accuracy, and completeness in relation to Black Lung payment procedures and the information in the automated data bases. These samples were designed to permit the development of comprehensive loss estimates (precision of ±5% and confidence level of 95%) based upon the actual occurrence of events in the files reviewed.

DCMWC management delayed nearly two months in agreeing to provide access to these files. Due to the delay and the severity of the problems identified in the Black Lung data systems, the loss assessment was reoriented. This assessment was derived from the development and analysis of loss profiles based primarily upon machine-readable data from the November 1980 automated DCMWC data bases.

The loss assessment process involves analysis, evaluation, and computation, incorporating statistical, program analysis, econometric, and data processing and systems analysis disciplines in identifying and evaluating the level of resource loss in the subject systems. Through successive iterations of the analytical, evaluative, and computational steps, preliminary loss profiles were refined and interpreted and overpayment estimates revised to reflect the most accurate assessment that could be made from available data. As a final step, estimated amounts were offset by possibly related recoveries, resulting in an estimated net loss.

Our evaluation of the data bases and automated payment systems revealed such significant loss problems that we believed it vital to provide a report to ESA management prior to continuing analyses in additional DCMWC areas of potential loss activity.

Major findings with respect to the Black Lung automated payment systems and data bases cited in the report concern identified losses and related system weaknesses. Findings related to identified loss are:

- $87.298 million in total improper payments through November 1980, continuing at $1.123 million per month, or $13.476 million annually.* This figure includes:
  - . $44.274 million in payments that have been made under circumstances that violate basic fiscal control mechanisms; and
  - . $52.042 million in overpayments that have been made by DCMWC automated systems, against which we offset $16.444 million in recoveries, resulting in
    - . $35.580 million lost from the payment systems through November 1980, as follows
      - . Medical payments loss of $2.523 million, continuing at $130,000 per month, or $1.560 million annually.
      - . Benefit payments loss of $33.057 million, continuing at $769,000 per month, or $9.226 million annually.

It should be noted that while the estimates are based upon all payments recorded for July 1973 through November 1980, the vast majority of these improper payments occurred in the 23 month period from January 1979 through November 1980.

Findings related to system weaknesses include:

- Financial accounting systems are inadequate to reconcile payments and recoveries with approved claims.
- $16.6 million in benefit payments are not included in cumulative total payment fields in the benefit payment data base.
- 3,197 benefit records have ineligible beneficiaries as augmentees.

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*These are the totals of both items, less amounts included in both .

- 1,047 medical payments were made for service after miners' dates of death recorded in the Black Lung Information System (BLIS).

- 177 active benefit payment records are associated with deceased miners.

- Over 35,000 duplicate medical payments are outstanding.

- 12,376 social security numbers in automated payment files do not have a claim record in BLIS.

- 1,029 social security numbers in the automated files are invalid according to the Social Security Administration algorithm.

- Over two thousand invalid entries were found in critical data fields of benefit payment records.

- The ADP systems have serious security problems.

- Payment records were reported destroyed during the course of this analysis in violation of 41 CFR 101-11.403.

- Inadequate edits are performed on automated payment records.

- Manual payments frequently are not entered into the appropriate data bases.

- Audit trails within the payment systems are critically inadequate.

- ADP system payment controls are routinely by-passed.

Recommendations presented in this report, which supplement those contained in the vulnerability assessment, include proposals that DCMWC:

- Modify data entry procedures to restrict access to the data bases and provide for periodic reconciliation of actual versus authorized activity.

- Modify procedures for making changes in the data bases to restrict access, create a permanent record of all changes, and provide for periodic reconciliation of actual versus authorized activity.

- Provide for the collection of additional data sufficient to establish an adequate audit trail in the automated data bases.

- Initiate additional computer payment controls for invalid and inconsistent data.

- Initiate a comprehensive evaluation of the security of the automated systems and data bases.

- Initiate immediate action to terminate monthly payments that are resulting in total payments beyond allowable limits and to terminate payments to duplicate records, ineligible augmentees, deceased claimants and invalid claim numbers.

- Begin a system of periodic revalidation of all data upon which payment amounts are based.

- Develop and implement adequate fiscal procedures to account for all payments and recoveries.

- Establish a permanent loss prevention unit.

We recognize that implementation of the recommendations made as a result of the two studies of DCMWC systems and procedures will require extensive changes in many aspects of claim and payment processing. However, we firmly believe that the magnitude of loss identified in this limited assessment clearly dictates that corrective action be taken in a prompt and effective manner.

Further, because of our decision to provide this report to ESA management at the earliest possible time, numerous additional areas of potential loss have not as yet been reviewed. Based on our limited evaluation of some of these areas in other contexts, we believe that the potential loss from additional sources is at least as large as that identified in our analysis.

These additional sources of major potential loss include:

- Duplicate benefit and medical payments by DCMWC and the Social Security Administration.
- Duplicate medical and benefit payments by DCMWC and State compensation systems.
- Duplicate medical payments by DCMWC and Medicare.
- Duplicate medical payments by DCMWC and the United Mine Workers Health and Retirement Fund.
- Duplicate payments to Federal employees from the Black Lung and FECA Programs.

Since the initiation of this analysis, DCMWC has made a number of changes in the Black Lung automated payment systems. However, with respect to the total system vulnerabilities identified, these actions have minimal impact.

We recognize that program personnel have been attempting to resolve an extremely large backlog of claims, generated by recent changes to the enabling legislation. However, due to the fact that so many of the identified losses could have been easily detected and prevented, without extensive or sophisticated technical resources, we contend that there is clearly a need for better balance between program production and program integrity.

We stress that although substantial loss and loss vulnerabilities within the payment systems have been identified, our greater concern relates to DCMWC's almost total lack of historical interest in and commitment of resources to the prevention of losses, and the causal factors and implications of such inadequacy.

There is little evidence that the identification and evaluation of current losses and the prevention of future such events has been perceived as a priority by DCMWC management; that situations creating an opportunity for loss to occur are diligently searched for; that sufficient resources are allocated to functions concerned with the protection of the agency's assets; that corrective actions have been adequately implemented when losses have been detected; or, that basic program controls have been routinely followed.

Thus, we suggest that, although the prompt elimination of continuing loss and loss problems is required, the more significant long range goal to be achieved is the implementation of strong program management directed towards the prevention of future loss.

On April 7, 1981 draft copies of this report were forwarded to the Employment Standards Administration for review. The agency's comments were requested by May 7, 1981. In a memorandum dated May 8, 1981 the agency indicated that delays had been encountered and that comments would be forthcoming no later than May 15, 1981. On June 17, 1981 the agency's comments were received.

The material presented by the agency indicated that significant DCMWC actions to address the problems of resource loss from the automated systems were not considered in the draft report. In order to evaluate the agency's claims an extensive research effort was undertaken.

Based upon that analysis, we determined that the scope of the information to be presented in relation to the agency's comments warranted presentation as a supplement to this final report.

Our evaluation of agency claims, as reflected in the supplement, does not alter our conclusion that DCMWC management has not considered the prevention of financial loss and the control of Federal financial resources a priority activity. In our view, since the passage of the Black Lung Benefits Reform Act of 1977, ESA and DCMWC management have treated the rapid processing of claims and the efficient, responsible management of financial resources as mutually exclusive objectives, and have focused available resources on the processing of claims and delivery of payments.

We note that both ESA and DCMWC have recently initiated action to establish permanent loss prevention units and that the agency's FY83 budget request has allocated a substantial amount of OWCP resources to loss prevention and financial control activities. These are positive steps which, we believe, can contribute substantially to the elimination of present vulnerabilities and the prevention of future loss events.

We must note, however, that the majority of recommended controls are reportedly to be implemented only through the "new system" to be obtained through procurement actions. We contend that the majority of critical system deficiences can be corrected quickly, with a minimum of computer programmer effort. This failure to act expeditiously despite the demonstration of major historical and continuing overpayments generated by faulty and inadequately designed and implemented payment procedures and systems, is a clear failure to fulfill elementary management responsibilities.

The prevention of improper and/or fraudulent disbursement of funds is a management responsibility not an option. There is no acceptable justification for failing to take all actions necessary to insure proper control over the Government's financial resources. It is imperative that the program initiate such actions without further delay.

American Iron and Steel Institute,
Washington, D.C. October 30, 1981.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, House of Representatives, Washington, D.C.

Dear Congressman Rangel: The following is in response to your letter of October 19 addressing additional questions to me on the testimony I gave on behalf of AISI before your subcommittee on the black lung program.

The AISI agrees with the need to provide benefits to those who are truly disabled from black lung disease. And while the AISI believes that the creation of state black lung programs has eliminated the need for the federal program, the AISI, in the alternative, believes that, if a federal program is to be continued, the financial problems of the black lung trust fund must be faced. As we stated to your subcommittee, AISI believes that to deal with these problems the benefit structure must be reformed before or concurrent with any increase in tax payments to the fund.

The benefit changes included in the Department of Labor's proposed amendments to the black lung statute include several useful reforms which AISI addressed in its testimony before your subcommittee. However, AISI believes additional changes should be made. We had hoped that the Administration proposal would be more comprehensive.

The DOL proposal recognizes that substantive reform is an essential part of any package dealing with the financial condition of the trust fund. The proposal includes absolutely necessary changes in eligibility standards, reforms in benefit provisions, and changes in interim benefit payments along with a change in the local tax.

Though the DOL proposal addresses several substantive reform issues it leaves untouched other issues including the definition of "coal miner" which permits benefit payments to some persons who have minimal or no exposure to coal dust, and the definition of "pneumoconiosis" and "disability" which in reality permits the award of benefits to persons who are not disabled from black lung disease. We have discussed these issues in our comments submitted to you previously.

AISI has in the past, strenuously opposed additional transfers to the fund because such tranfers would in our view exacerbate the fund condition. Though our basic objection to additional transfers continues, the transfer provision in the DOL proposal is more limited in scope than some proposals previously discussed.

The AISI does not have sufficient information to determine whether or not the trust fund can be made solvent in the short run by the benefit changes suggested by the AISI and others or the DOL. Similarly, AISI lacks sufficient data to analyze the projections of the Department of Labor on the future financial condition of the fund.

We urge that Congress enact substantive reform of the black lung program if any change in the tax is to be considered. It should be pointed out that the trust fund suffers from a large liability created under ill advised legislation, and may only be set on a recovery path through enactment of responsive and reasonable reform. We urge your support for that goal.

Thank you for the opportunity to express our views in this most serious matter.

Very truly yours,

John H. Stenmark.

Mining and Reclamation Council of America,
Washington, D.C., October 30, 1981.

Hon. Charles B. Rangel,
Chairman, Subcommittee on Oversight, Committee on Ways and Means, House of Representatives, Washington, D.C.

Dear Chairman Rangel: On behalf of Dwight Keating and the Mining and Reclamation Council of America (MARC) we appreciate the opportunity of commenting on the Department of Labor's proposal submitted to you subsequent to the final oversight hearing on the insolvency of the Black Lung Disability Trust Fund on September 28, 1981. Our response to your numbered questions are set forth below.

1. Generally the Department of Labor's proposal to amend the Black Lung Benefit Act and the Black Lung Revenue Act appears to be an effort to set forth a proposal which, although it does not comprehensively address the problems with the eligibility criteria in current law, could be acceptable as a partial reform of the program until a more comprehensive reform package is compiled based upon a more complete analysis. While we can understand this effort to fashion a package of changes that could receive Congressional approval within a relatively short time frame, it

does not adequately address the concerns of members of the Mining and Reclamation Council.

Several of our more serious concerns, not addressed by the Department of Labor proposal, are:

Presumptions will continue to be triggered by years of coal mine employment irrespective of the exposure to coal dust during that employment and in total disregard of existing evidence, contained in MARC's testimony, which demonstrates that the possibility of contracting Coal Workers Pneumoconiosis (CWP) in employment at a surface coal mine is less than 1 percent.

The statutory definition of "Black Lung" is retained which is far more expansive than the medical definition of CWP—the only form of black lung which has been medically determined to be progressive and disabling.

The statutory definition of disability continues to be inability to perform "usual coal mine employment." This provision is unparalleled in the lexicon of disability programs and permits a black lung beneficiary to receive benefits although meaningfully employed in another profession.

Beneficiaries will continue to receive benefits under this "workers compensation" program even though they may be beyond normal retirement age, out of the workforce, and receiving social security benefits.

Eligible dependents of current black lung beneficiaries will continue to be eligible to receive benefits even though the qualifying claimant's death was unrelated to black lung.

The burden of financing the Black Lung Disability Trust Fund (BLDTF) will be doubled and maintained at a 2 to 1 ratio between underground and some surface mined coal absent consideration of the relative contribution of these mining activities to the presence of the disease.

Coal operators will continue to be required to be insured against their employees contracting black lung disease under both applicable state workers compensation laws and the federal black lung laws.

These concerns are not intended to be a comprehensive listing but do highlight problems with the current law which are not addressed by the Department of Labor proposal.

2. In its prepared testimony submitted to the Committee, MARC stated:

In considering the alternatives for addressing the fund's deficit, the subcommittee may wish to consider a more equitable approach which would not disportionately impact smaller operations. The cost of this part of the program would thus be spread, as is the case with social security disability and all black lung claims approved from the Act's enactment to July 1, 1973, throughout the tax base of the Federal Government. Operators would remain liable for benefits and medical payments in claims where they are responsible under the law, while all claims in which no operator can be identified would be paid out of general revenues.

The fund's deficit is not a problem created by the coal industry. It arose because the Congress expanded the program from the original goal of providing compensation to persons disabled by CWP into an income maintenance program for over half a million persons. Fairness would dictate that the cost of solving this problem be allocated to all taxpayers.

The Department of Labor's proposal endorses a maintenance of the status quo by providing for a doubling of the present tax to fund elimination of the deficit of the Trust Fund. For the reasons set forth above, MARC believes that alternatives for reducing the Trust Fund's deficit should be addressed.

3. The proposed transfer of payment responsibility for a class of claims approved by the Department of Labor under the 1977 amendments to the Benefits Act from responsible operator status to the Trust Fund addresses a problem currently being litigated in several state and federal courts. In these cases, because of a denial of the claim under the provisions of the law prior to the 1977 amendments, neither the responsible operator nor their insurance carrier had reason to believe that liability would subsequently arise for the claim. In the current litigation insurance carriers are denying contractual liability for these claims while the operators are asserting that the insurance carriers are contractually liable. Should the insurance carriers prevail in the litigation, with a present value of a black lung claim of approximately $175,000, a number of smaller operators who would be liable for these claims would be forced to liquidate to meet this unanticipated financial obligation. In the alternative, insurance carriers would pursue higher premiums to recoup their losses should they be found liable. As a consequence, it is likely that smaller operators, who generally are not financially able to self-insure under the law, will be adversely impacted irrespective of which party prevails in the litigation.

4. MARC has not had an opportunity to review or analyze the computer model used by the Department of Labor to estimate Trust Fund solvency under various

proposals nor has MARC had an opportunity to review the assumptions built into the model. However, as a result of discussions with actuarial firms, MARC would recommend that the Department of Labor be directed to consult with independent firms to review and refine its assumptions and model.

In conclusion, Mr. Chairman, MARC would appreciate the opportunity to testify on the Department of Labor's proposal and/or other proposals to amend the Benefits Act and the Revenue Act at legislative hearings on this subject. Your continuing interest in this subject is appreciated.

Sincerely,

TOM ALTMEYER,
Director,
Congressional and Government Affairs.

AMERICAN INSURANCE ASSOCIATION

1025 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 293-3010

October 30, 1981

The Honorable Charles B. Rangel
Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
1101 Longworth Office Building
Washington, D.C. 20515

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Subcommittee on Oversight

RE: BLACK LUNG BENEFIT PROGRAM

Dear Mr. Chairman:

This will acknowledge and thank you for your communique of October 15 inviting our Association to comment further on the abovestyled matter, with particular reference to the proposal submitted to you by the Department of Labor under date of October 9, 1981. Your staff will recall that because we anticipated the announcement of the DOL position at your September 28, 1981 hearings, we changed our witnesses at those hearings in order to give us an opportunity to review and examine the Department's position.

We have looked at the Administration proposal, and although we find a number of things therein that we would probably have preferred be handled otherwise, we certainly would not be opposed to its enactment in its current form.

Our primary interest in the DOL proposal is in Section 5, relating to the liability of the Trust Fund for certain special claims. The Department contends, and our lawyers and actuarial consultants do not dispute, the result of this section would affect approximately 10,200 cases, transferring them from the responsibility of owner/operators to the Trust Fund. The proposal which we were prepared to submit to and defend before your Subcommittee would have transferred considerably more cases than does the DOL proposal, approximately 16,000. We are firmly convinced that at least the higher figure of 16,000 such cases were retroactively made the responsibility of mine owner/operators by the 1977 amendments to the Black Lung Benefits Act, and that equity would compel all of these to be transferred to the responsibility of the Trust Fund. However, it is obvious that the DOL proposal seeks to strike a balance among as many interested parties as possible, and while we would continue to contend that a strong case could be made for transferring more claims affected by the 1977 Amendments, we would support the Administration's proposal if it could be enacted as a total package.

JACK MOSELEY, CHAIRMAN WILLIAM O. BAILEY, VICE CHAIRMAN WAVERLY G. SMITH, VICE CHAIRMAN T. LAWRENCE JONES, PRESIDENT

As with Section 5, we would probably contend also that Section 2 should go further in terms of tightening eligibility standards for future applicants for black lung benefits. We believe that strong arguments can be made for the removal of the several presumptions that are currently in the law but would be removed by Section 2. However, once again, because of the efforts of the DOL to strike a balance among the interested parties, we would suggest that Section 2 also represent a reasonable effort to control future abuses of the Black Lung Program without depriving current recipients of their benefits or "changing the rules after the game has begun" with regard to those who were previously awarded benefits.

We also believe that the temporary (until 1995 or until the Trust Fund earlier becomes solvent) increased excise taxes provided in Section 6 of the DOL proposal represents a reasonable approach to attacking the problem of the Fund solvency and the tremendous debt-service cost currently associated with those problems. We have no reason to contest the figures regarding the savings that the Department claims their proposal would generate both in the obligations of the Fund and the advances needed to continue to pay benefits.

In conclusion, Mr. Chairman, while we would prefer the transferral of more cases to the Trust Fund under Section 5, and while we would support greater restrictions on eligibility for future claims, we believe that the DOL proposal represents a genuine effort to eliminate many of the problems with and the current criticisms of the Black Lung Program, and for this reason we would support prompt enactment of the same. As Secretary Donovan told your colleague, Chairman Perkins, by letter of October 28, we too fear that failure of prompt enactment of a bill like that currently before you from the DOL might well create "... circumstances that will lead to a need for further re-examination of the issue by all parties and a delay that will exacerbate the budget problem." In short, we are convinced that failure to enact the DOL proposal promptly, even with those portions that we would like to see handled otherwise, would be financially irresponsible given the problems that the Black Lung Program faces today.

Your staff has been extremely cooperative with our office in considering our point of view, and I sincerely hope that you or the members of the Subcommittee staff will let us know if we can provide additional comments, information or data.

Thanking you again for your kind consideration in this and all other matters, I am

Respectfully,

Bill Suttle

William W. Suttle
Vice President
Federal Affairs

WWS/src

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NOV 19 1981

Ways and Means
Subcommittee on Oversight

AMERICAN INSURANCE ASSOCIATION

85 John Street
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(212) 669-0400

November 5, 1981

Representative Charles B. Rangel, Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

With reference to your letter of October 19 requesting specific responses to six questions I should like to comment as follows:

1. We have not had a sufficient time to review the Department of Labor's proposal in detail. A preliminary review indicates that the proposal will transfer to the trust fund some of the claims, closed prior to the 1977 amendments, which were subsequently approved under the new standards mandated by those amendments. All of these claims will not be transferred because of language added to §402 of the law by the proposed bill (§5 of the proposal, page 5) which transfers' only those claims where the claimant was notified by the Labor Department of an administrative or informal denial more than one year prior to the date of enactment of the 1977 amendments and who did not, within that year, request a hearing on the denial. Those cases where a hearing or a review was held resulting in a denial would be transferred if they were subsequently re-reviewed and approved under the new standards. Preliminary data indicates that about 10,000 cases will be transferred instead of 16,000. Other elements of the proposal provide significant reform of the Black Lung Law and these provisions we endorse.

2. The major pending cases are as follows:

Edward Yakubco v. Republic Steel Corporation and Director, Office of Workers' Compensation Programs BRB No. 79-674 BLA, OWCP No. 172-07-7995 (December 10, 1980)

This case, decided by the Benefits Review Board on December 10, 1980 involved a question of operator liability for certain Part B claims. Specifically, the claimant, Edward Yakubco, chose to have his Part B claim reviewed under the Black Lung Benefits Reform Act of 1977 (BLBRA) by the Department of Health, Education and Welfare.

His claim was approved and, pursuant to an interpretation by the Administrative Law Judge (ALJ) that such claims are to be treated as Part C claims, the responsible operator, Republic Steel Corporation, was advised to begin payments.

Republic Steel appealed the decision of the ALJ, contending that the Black Lung Disability Trust Fund was responsible for payments to the claimant. The Benefits Review Board, in a 2-1 decision, held that the Trust Fund, not an individual coal mine operator, is liable for benefits in Part B claims considered on review and approved by the Department of Health, Education and Welfare. In so holding, the Board reasoned that there is no authority in the BLBRA for converting these approved Part B claims into Part C claims.

On October 23, 1981 the Third Cicuit Court of Appeals affirmed the decision of the Benefits Review Board.

Rockwood Insurance Company v. Raglani Coal Company and Vance McCormick, Court of Common Pleas, Indiana County, Pennsylvania, Docket No. 2054 C.D. (March 30, 1981)

Vance McCormick was a strip miner for Raglani Coal Company from 1965 until March 16, 1973, the last day he worked as a miner and the last day on which he was exposed to conditions causing black lung disease. On June 25, 1973 McCormick filed a federal black lung claim under Part B of the Federal Coal Mine Health & Safety Act of 1969 with the Social Security Administration. His claim for benefits was denied, but on April 7, 1978, after the passage of the Black Lung Benefits Reform Act of 1977 (BLBRA), he requested that his claim be re-reviewed by the Social Security Administration under the BLBRA Act. Raglani Coal Company was then informed by the U.S. Department of Labor that the company was identified as the last responsible operator and therefore should assume payment of benefits to claimant McCormick.

Rockwood Insurance Company had insured Raglani Coal Company from May 28, 1975 through May 1, 1980 under a series of policies, each of which included the Federal Coal Mine Health & Safety Act of 1969 (FCMHSA) Endorsement. Rockwood Insurance Company petitioned the Court of Common Pleas, Indiana County, Pennsylvania for a declaratory judgement that McCormick's claim was not covered under the policies issued by Rockwood. Rockwood's position was based on an assertion that the term "first filed", when used in the FCMHSA Endorsement, means the date when the claimant first submits his claim papers. Raglani Coal Company argued that the term "first filed" means the date that the claimant requests re-review of his claim under the BLBRA.

The Court held that the policies of insurance issued by Rockwood to Raglani do not cover the McCormick claim because the claim was first filed against the insured on June 25, 1973, prior to the date that coverage under the policies began on May 28, 1975. The court based its holding on a finding that the BLBRA treats a request for re-review of a Part B claims by the Social Security Administration not as a new claim but rather as a previously filed and denied claim in light of the new evidentiary standards of the BLBRA. In view of this the court found the term "first filed" to mean the date when the claimant first submitted his claim for benefits to the Social Security Administration.

The case is currently on appeal to the Superior Court.

A summary of Old Republic v. Elkhorn & Jellicoe has been forwarded to Katherine Porter (staff of the Subcommittee on Oversight) by our Washington, D.C. office.

3. Specific language for transferring claims to the trust fund is contained in the Labor Department's proposal. As indiciated in answer to number 1, not all cases would be transferred. All part B cases would be transferred (approximately 8,000 cases) but only 2,000 out of approximately 8,000 part C cases would be transferred. We would prefer that all part C cases be transferred and to that end would suggest the deletion of the amendment to §402 of the law (§5 of the proposal, page 5). We do not yet know the cost of the transfer. The National Council on Compensation is costing out the effects of the proposed bill.

4. We supported H.R. 7745, introduced by Representative Perkins of Kentucky, in the last Congress. That bill would have advanced the cut off date of claims payable from the Trust Fund from January 1, 1970 to July 1, 1973. Operators and carriers who made payments to claimants whose last date of employment fell between January 1, 1970 to June 30, 1973 would have been reimbursed for these claims by the Trust Fund. This bill would not have solved the entire problem but it was felt that this was the best that could have been achieved at the time. The bill passed the House but was not reported out of Committee in the Senate.

5. One of the reasons, perhaps the main reason, for the high rate of controversions is that the claim is not filed initially with the responsible operator or carrier. When the law was just enacted there may have been problems with finding the responsible employer since many claims were for exposure many years ago. Today however, claims filed are, for the most part, those where exposure is recent. Thus the identity of the operator is known. The operator is faced with a claim with a decision already made that he is liable for payment, many times with retroactive payments, and only 30 days in which to accept or deny the claim. If the claim were filed directly with the operator we believe that the rate of controversion would be lower.

6. We have not had an opportunity to review the computer model.

I regret that I was not able to respond before October 30. I was away from the office for an extended period and some of the requested information was not immediately available. If I can be of further help please advise.

Sincerely yours,

Charles Coakley
Counsel

CC:fml

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Ways and Means
Subcommittee on Oversight

November 9, 1981

The Honorable Charles B. Rangel
2432 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rangel:

The American Mining Congress is pleased to respond to your request for additional comments regarding the Black Lung Disability Trust Fund.

The health and safety of all who work in the mines is of the highest concern to our industry. We have, therefore, an abiding interest in the black lung benefits program. With this in mind we urge a return of the black lung program to its intended purpose -- compensation for death or disability due to coal workers' pneumoconiosis. The only way to achieve this purpose is to address the root cause of the problems of the black lung program by rewriting its substantive provisions. The opportunity is at hand to achieve the balance needed in this program -- a balance based on credible evidence and encompassing both compassion and common sense. Our response to your request for additional comments must be viewed within this context.

As a part of our written submission, we included a list of needed changes to the Black Lung Benefits Act. These changes are necessary to return the Act to its intended purpose -- compensation for death or total disability due to coal workers' pneumoconiosis.

It is still our belief that these changes are essential to restore solvency to the Fund on a continuing basis. The proposal submitted by the Department of Labor does however, serve as a good starting point for reform of the black lung benefits program. And, since budgetary constraints argue strongly for immediate reform of the program, we recognize that complete and more controversial reform may have to be delayed until a later date.

continued . . .

The mining industry's endorsement of any tax increase is contingent on substantive changes to the Act. With this as a background, we will now address the questions you have submitted.

1. Do you have any comments on the enclosed proposal submitted by the Department of Labor?

We have reviewed the Department of Labor's proposal and find that many, but not all, of the reforms we have recommended are incorporated within the package. We note further that the DOL package, insofar as substantive changes are concerned, is only prospective in nature and will not be applied retroactively to cure past and continuing abuses.

We feel that these changes should be made immediately and apply to all claims not yet finally adjudicated, or to any potential claimants whose rights have not yet vested. For example, the DOL proposal would not affect unrelated death benefits for any case in which the miner has already filed a claim. The potential survivors of these miners have no vested rights in benefits, and if a miner's death does not stem from black lung, there is no reason to provide black lung fund benefits to survivors.

We note that the DOL proposal doubles the per ton tax and raises the tax ceiling, which is currently equal to two percent of the sales price, to four percent. It is AMC's position that this ceiling remain at two percent for surface mined coal. In addition, AMC stresses that any tax increase be effective only until the Trust Fund becomes solvent.

Nevertheless, to the extent that the Department of Labor proposal constitutes an achievable method of attaining solvency of the Trust Fund through at least partial legislative reform of the black lung eligibility criteria, we endorse the proposal.

Our support of the DOL proposal must be conditioned upon achieving substantive changes to the eligibility criteria and a firm commitment from DOL that it will also cure the administrative deficiencies in the program.

We are attaching the Executive Summary of a recently released report by the Inspector General's Office of DOL documenting overpayments of $87 million in the black lung program through November 1980. The Inspector General estimates that these overpayments are conservatively estimated to be continuing at a rate of $1.23 million per month. The report charges that these overpayments can be traced exclusively to weaknesses in the administration of the program.

This report, coupled with testimony by the General Accounting Office in July that 84% of the cases examined paid benefits without adequate medical evidence to justify the claims, is startling evidence of the overall lax administration of the black lung program.

2. You have proposed many changes in the benefit and entitlement portion of the Black Lung Program. However, will the Black Lung Disability Trust Fund become solvent without an increase in the coal excise tax even with these changes in the program? Do you have any figures on how much money your proposed changes in the benefit portion of the program would save the Trust Fund?

Although we do not have an estimate of the savings which would result from our proposals, we note the General Accounting Office's estimate that 84% of the claims they examined were paid without adequate medical evidence.

We firmly believe that any needed tax increase would be sizably reduced and ultimately repealable by substantive amendments to the program. We would urge Congress to tighten the program's overly-broad eligibility criteria and instruct DOL to implement management programs which would end the $1.23 million per month overpayments identified by the Inspector General's report.

3. What is your position on proposals to transfer to the Trust Fund the liability for certain claims arising from the re-review required by the 1977 Amendments?

The 1977 Amendments made wholesale changes in the eligibility requirements, and also made it possible for many previously denied claims to be re-reviewed. The DOL package would transfer many of these claims into the Trust Fund. We, as you, are advised by the DOL that the number of these claims will be limited; presently estimated by DOL at 10,200.

Circumstances dictate that our response be tentative and conditional. We understand that by letter of October 28, Congressman Erlenborn specifically requested from DOL an explanation as to the criteria which would be applied by the Department in respect to the transfer of previously denied Part C claims, i.e. claims filed on and after July 1973, for adjudication by the Department of Labor. These are very material questions that Congressman Erlenborn has raised.

We would again point out that the DOL Inspector General's report documents duplicate benefit and medical payments, payment to nonexistent or ineligible beneficiaries, and inadequate financial accounting systems. These abuses must not continue to bankrupt the Trust Fund.

To support the transfer provision, AMC would need adequate assurances from DOL that these problems have been corrected. Furthermore, we wish to predicate our position on assurance from DOL that the claims will be carefully scrutinized to ensure that payments are made only to those with adequate medical evidence of disability or death from coal workers' pneumoconiosis.

Because of the significant increase in Trust Fund liability that will be created, it is essential that these corrective steps be taken if these claims are transferred into the Trust. Furthermore, the American Mining Congress is willing to support the transfer provision only as part of the entire DOL substantive amendment package.

4. The Department of Labor has a computer model to estimate when the Trust Fund would become solvent under various proposals. Have you had an opportunity to review or analyze the model? If so, have you found its assumptions to be reasonable and its predictions to be accurate?

We have examined the latest DOL set of computer runs describing the various input and output variables. Our review of this material indicates that the proposal would change three input variables: (1) number of beneficiaries, (2) statutory tax rate, and (3) interest rate. As a result of these changes the model shows a reduction of total obligations, elimination of federal advances and, eventually, elimination of the Trust Fund deficit. Although this information is useful, more data are needed to accurately assess the impact of the proposal. Our major concerns are as follows:

(a) To accurately evaluate the DOL model it is necessary to review the econometric model, describing the relationships of all input variables to their output;

(b) DOL's model uses nominal dollars, which assumes that current dollars are equal to future dollars. We believe that the analysis should be converted to constant dollars. As has been demonstrated by the ongoing analyses of the Federal budget, computer estimates are not always accurate -- for example the DOL model demonstrates that not only would the Trust Fund's $1.5 billion deficit be eliminated, but a $6 billion surplus would be created after the tax increase is repealed;

(c) It appears from the model that DOL assumes the demand for coal will not be affected by the proposed tax increase. We believe that DOL should develop an elasticity function for the demand for coal for both domestic and foreign markets to determine whether demand will be affected;

(d) Based upon conversations with DOL officials, we have been informed that one of the assumptions used in determining future beneficiaries is based on DOL's case approval history. We believe this is a fallacious assumption in that it totally ignores the strides industry has made in reducing coal dust levels in the mines. Based upon current levels, the incidence of black lung should eventually be reduced to zero. However, based on DOL's assumptions, claimants will still be awarded benefits long past the time that black lung will be virtually eliminated from our nation's coal mines.

We thank you for this opportunity to comment on DOL's proposal and we look forward to working with you to achieve a balanced Trust Fund and to prevent the unwarranted black lung payments which have led to the Fund's insolvency.

With warmest regards, I am

Sincerely,

J. Allen Overton, Jr.
President